# TRANSCRIPT OF RECORD.

## SUPREME COURT OF THE UNITED STATES.

No. 232.

DAVID A. WILLIAMS, HECTOR McNIELL, AND SETH W. BOLTON, APPELLANTS,

vs.

JAMES BANKHEAD.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF ARKANSAS.

**FILED NOVEMBER 4, 1872.**

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1 UNITED STATES OF AMERICA:
*Eastern District of Arkansas:*

Be it remembered that, at a circuit court of the United States of America in and for the eastern district of Arkansas, begun and holden on Monday, the 9th day of April, anno Domini one thousand eight hundred and sixty, at the United States court-room, in the city of Little Rock, Arkansas, the honorable Daniel Ringo, district judge, presiding and holding said court, the following proceedings were had, to wit:

And on April 16th, A. D. 1860, as follows:

JAMES H. BRANCH
*vs.*
GEORGE MCGREGOR, NATHANIEL E. ALLOWAY, and James Bankhead, partners under the name & style of McGregor, Alloway & Co.

Comes the said complainant, by his solicitors, and files here his bill and the exhibits therein referred to and the bond of himself in the penal sum of forty thousand dollars, with Joseph Branch as his security, conditioned to law, and thereupon moves the court for an injunction as is prayed for in his said bill; and the said defendants, by their solicitor, M. L. Bell esq'r, come and waive the notice required in that
2 behalf, and enter their appearance herein; and the court, after hearing and being well advised of the matters stated in the said bill, and after hearing the argument of the solicitors of the respective parties upon the said motion, doth consider and adjudge that an injunction issue according to the prayer of the said bill enjoining and restraining the said defendants and each of them and their agents and attorneys from further prosecuting their said suit at law mentioned in the said bill against the said complainant; and also from bringing any other suit or suits against him or his property in relation to the subject-matter thereof until the final decision and decree in this cause; and also from further prosecuting any suit whatever whenever brought by them against him in respect of the matters aforesaid; and the said bond, so filed as aforesaid, appearing to the court to be in due form, the amount thereof sufficient, and the security good, it is ordered that the same be approved.

3 And the said defendants waive a service of the said writ of injunction, and, by consent and leave of the court, have until the first Monday of September next to file their answer, and this cause is continued; which bill is in the words and figures following, to wit:

UNITED STATES OF AMERICA,
*Eastern District of Arkansas:*

To the Hon. the judges of the United States circuit court in and for the eastern district of Arkansas, in chancery sitting:

Your orator, James H. Branch, who is a citizen of the State of Arkansas, in the said eastern district thereof, brings this his bill of complaint against George McGregor, a citizen of the State of Louisiana, and Nathan E. Alloway and James Bankhead, citizens of the State of Tennessee, partners, under the name and style of McGregor, Alloway & Co., whom he prays may be made defendants hereto, and there-
4 upon he complains and shows:

That, to the April term of this court for the year 1859, on the law side thereof, said defendants, for the use and benefit of the said George McGregor and James Bankhead, by Messrs. Bell and Carleton, attorneys, residing in said district, brought their action of assumpsit against your orator wherein and whereby they claimed that said complainant was, on the 1st of January, 1859, indebted to them for the use aforesaid for goods, wares, and merchandise by them before that time sold and delivered to your orator for money loaned, advanced, and paid out for him for commissions, percentage, &c., due them as commission merchants in New Orleans, Louisiana, in the sum of twenty thousand eight hundred and eighty-six dollars and eighty-six cents, ($20,886.86,) and said parties for the use aforesaid, demanded in such suit that sum of your orator, process of subpœna was duly issued and served on your orator and to such time he appeared as commanded and filed his motion for a bill of particulars of the demand sued in said cause; to which the plaintiffs therein responded by presenting
5 drafts, bills, &c., accounts, many in number, dated at various times running through several years, attached to the deposition of William Brothers, by them taken in said cause, and who was the book-keeper of said firm in New Orleans; which bill of particulars as presented was and is too uncertain and indefinite for any purpose whatever, and from it your orator could gather no satisfactory knowledge of the business transactions existing or previously carried on by and between them and your orator; and your orator at said term, on the 27th day of April, 1859, filed another motion for a rule on said parties to produce by a day certain in said cause a fixed and definite demand against him, but said rule was not made absolute, and your orator failed to have produced any other or better bill of particulars therein. On the 13th of April, 1859, at said court, said plaintiffs opened and published in said cause the deposition of Nathan E. Alloway, one of the defendants herein, by them before that time taken; and on the 19th of same month they opened and published the deposition of said Brothers hereinbefore referred to; and afterwards, on the 2d day of
6 May, 1859, your orator filed his motion to continue said cause without even having filed pleas therein, as he had not then the full and satisfactory information he wished upon which to frame and interpose his defense to said demand, and such demand as presented was so vague and uncertain and complicated he did not desire, if his defense could have been made at law to prejudice his rights in a matter so important, by pleading before he was duly prepared to do so. And afterwards, on the day of May aforesaid, said court was continued by the court, and the same now remains in the court undisposed of, all of which will more at large appear, reference being had to the papers of said cause and the record thereof in the law court, which your orator prays to use and refer to if necessary as if duly and properly made exhibits to this bill.

Complainant would state and charge further that he does not owe said parties any such sum as claimed by them in said suit, ($20,886.86,) nor any sum approximating thereto, but he is willing to and does here admit that he owes them, but he utterly denies that they are en-
7 titled to demand and recover of him said sum, and he states and charges that on a full and fair accounting between them it would be found that complainant owes them about the sum of eight thousand dollars, ($8,000.00,) and not one dollar more, and this sum he is ready and willing to pay them in full discharge and satisfaction of their demand against him, and he brings that sum here in court subject to the

order of the court for that purpose; and the charge of defendant against him for the enormous sum by them claimed is unjust and fraudulent, is in utter violation of the law regulating the dealings had by and between them, and is directly against the agreements and understandings of the parties relative to their transactions; and, in order to show wherein such charge is illegal, complainant will here give, as nearly as he can, a history of the dealings had between them, and show how, when, and on what account any indebtedness at all grew up in their favor against him.

In the year 1853 your orator, as a planter on the Arkansas River, opened an account and commenced doing business with said Mc-
8 Gregor, Alloway & Co., as commission merchants, in the city of New Orleans, State of Louisiana, and on the 19th of July, 1853, said firm rendered your orator his first account current, wherein it appears he was indebted to them in the sum of six hundred and seventy-eight dollars and thirteen cents, ($678.13,) which account is herewith filed, marked Exhibit A 1, and part hereof; but in such account he is charged interest at eight per cent. when this complainant had not agreed to pay such per cent.; and, by the law of Louisiana, when these dealings and transactions were had, they could recover and were entitled to receive only five per cent., and so he avers such charge is usurious and should not be allowed as to three per cent. over and above the legal rate of interest, which is five per cent.

Complainant would state that the law of Louisiana regulating interest he can and will prove, as this court may direct, and he begs leave to file herewith a true copy of the same, duly authenticated by the secretary of state of Arkansas, as taken from the civil code of said State, articles 2895 and 1934 & 5, marked Exhibit X, and part hereof.

9 On the 19th July, 1854, said house rendered complainant his second account current with said firm, whereby it appears he was indebted to said firm in the sum of $17,008.26, but on one thing said account, that is, complainant's draft by them accepted for $3,684.99, he is charged interest at 12 per cent., which is likewise illegal and should not be allowed; and there is also charged thereon 2½ per cent. commissions for negotiating and advancing on $22,337.29, which amounts to $558.43, and such charge is unjust and illegal, as it is but interest at last, though named differently in said account, and such was not agreed to by your orator in any manner, and it should not be allowed; and on the whole amount is charged interest at eight per cent. making another charge of $628.57, which is illegal by three per cent. and should, as to that, not be allowed. Said account is herewith filed as Exhibit A 2, and, part hereof.

In August, 1855, said firm rendered complainant another and third account current, whereby he was found due them the sum of $6,153.34; but in said account there are commissions charged which are un-
10 just and illegal, as follows: For accepting draft at four months, $64.43; accepting draft 10 May, at eight months, $87.50; accepting draft same date, at 9 months, $75.00; accepting draft 10th October, at 3 months, $7.35; accepting draft 9 October, at 4 months, $18.79; draft of 21 June, due 1 March, $11.15; draft of 16 Dec., at 60 days, $3.99; draft of 15 September, at 6 months, $52.36; draft of 11 December, at 60 days, $1.00; draft of 10 May, at 10 months, $87.50; draft 3d January, at 6 months, $8.98; draft of 4th January, at 10 days, $2.50; draft of 30th January, at 90 days, $61.92; draft of 7 December, 4 months, $11.03; draft of 2d February, at 6 months, $6.25; draft of 15 September, at 7 months, $68.56; draft of 14 March, at 6 months, $7.35; on advancing of $5,299.02, the sum of 132.48, and an item of interest in said account of

eight per cent., making $146.18; all of which charges are illegal and grossly fraudulent, and should not be allowed only as to 5 per cent. interest on the cash balance, which, of course, your orator will not controvert. Said account is herewith filed as Exhibit A 3, and part hereof.

Complainant would here state that all the accounts exhibited
11 already, and those yet to be, show a very loose manner of doing business, and all presented in such shape and form as not to inform your orator of the condition of his business with said house. It is often omitted as to the person in whose favor the drafts were drawn; interest is not stated on the particular sum or balance due, but general charges of interest are made throughout, and so much annoyed and perplexed by these things was your orator, that he absolutely, upon the last account referred to, and demanded of them another, and they returned to him another statement, but not covering the defects alluded to, nor giving him any further light as to the condition of his business with them; and the account so by them rendered the second time for 1854 is herewith filed as Exhibit B 3, and part hereof, which shows throughout the same illegal charges as specified in A 3 hereto.

In April, 1856, said firm rendered complainant another and fourth account current, wherein he is charged commission for accepting his draft held by T. Martin, dated 10 Dec., '55, at 12 months, for 6,000$,
12 the sum of 150$ commission for advancing $5,090.00, the sum of $254.50, and interest on said account at 8 per cent. the sum of $164.70; all of which charges are grossly fraudulent and illegal, and should not be allowed. Said account is herewith filed, marked Exhibit A 4, and part hereof.

In May, 1857, said firm rendered the complainant another and fifth account current, wherein he is charged for accepting and advancing the sum of $4,752.61, at commissions $237.63, and interest on the account at eight per cent. $154,38, both of which charges are illegal, and should not be allowed only as to five per cent. on the balance due them. Said account is herewith filed, marked Exhibit A 5, and part hereof.

In May, 1858, said firm rendered your orator another and sixth account current, which was the last account between them, wherein he is charged for accepting on $9,616.73 commissions at 2½ per cent., the sum of $240.42, and for advancing on said sum a like sum of $240.42, and interest at eight per cent. on such account, $338.34; all of which charges are fraudulent, and should not be allowed only as to five per cent.
13 on the balance found justly due on such account. Said account is herewith filed, marked Exhibit A 6, and part hereof. And they thus continued their usurious charges against your orator by illegal percentage, acceptances, negotiating, &c., till about March, 1859, when they demanded of him the large sum of $20,866.86, as aforesaid, without rendering him a just and true account, or showing him in any manner how such indebtedness accrued which he refused to pay.

Complainant would state and show further that there never was a settlement had between said defendants and himself, and all the said accounts are what are termed running accounts; the balance due at the end of each commercial year is carried forward into the account of the next year. And on the 16th day of September, 1854, at Nashville, in the State of Tennessee, complainant made and executed in due form of law a mortgage to said firm to secure what he was then or might thereafter be owing them, but specifying no sum; which mortgage was made by him in good faith and with the view of securing them in any debt
14 he might owe them; and said mortgage shows that the indebtedness was continuing and running on to be afterwards determined;

which said mortgage was afterwards duly recorded in Desha County, Arkansas, where the property therein mortgaged is situated; and the original is in the hands, he supposes, of said defendants or some of them not under his control at all; a true copy whereof as well as the certificates of acknowledgment and of record is herewith filed, marked Exhibit C 1, and part hereof.

Complainant states and charges further that, although said mortgage specifies no sum, as of course it could not, depending upon future dealings, he is willing to stand to it, and leave it still a security to said parties to enforce the payment of whatever sum he may be found due them, and they now hold said mortgage as such security if they wish to insist on it in no wise satisfied.

Complainant would further state that, during all the aforesaid transactions was the firm of N. E. Alloway & Co., in Nashville, Tennessee, composed of the same individuals, was a branch of the said firm of McGregor,

15 Alloway & Co., and this accounts for many items in said accounts current accepted, paid, &c., by the firm in New Orleans for and on account of N. E. Alloway & Co., and the said N. E. Alloway, whose deposition is on file in said suit at law against the complainant, was a member of both firms, and the business of this complainant was to be done with the firm of New Orleans; his cotton was shipped there, sold by them, money advanced to him by them, and whatever in the premises might have been done at Nashville had to be sent to the firm in New Orleans to be there acted on and reported by said firm, and all of said accounts current are made out at and by said New Orleans firm,

And complainant would state further that the testimony of said N. E. Alloway and William Brothers on file in the said lawsuit against him is in reference to the same transactions by way of drafts, acceptances, advances, &c., named and mentioned in the said six accounts current hereinbefore alluded to; and upon those accounts or matters therein stated and no other is there any indebtedness existing on the part of your orator to said firm.

16 Complainant states and charges further that, besides the unlawful charges of commissions for accepting and commissions for advancing, which are but interest, and eight per cent. interest, each and every account rendered by said firm to your orator shows said firm, from beginning to end, compounded interest against him; after charging the commissions in a fixed sum, and making it a part of the account, they calculated interest at eight per cent. on those commissions before this complainant even received and accepted the accounts at the end of the commercial year, and without his knowledge or consent; and, besides charging him thirteen per cent., as before stated, on his accounts, interest was calculated on interest, as the face of those very accounts shows, and in this manner has his indebtedness been swelled to an amount larger by half than it ought in truth to be; and against this course your orator has, from the beginning, remonstrated, and never, in word or act, by writing or otherwise, authorized them to charge him in that manner.

17 Your orator further states and charges that said firm has recently sued him in the State circuit court at Nashville, upon this same indebtedness, and have thereby compelled him to make an appearance there, and much to his annoyance, trouble, and cost; and he believes and avers it to be true that they intended, if possible, to harass and vex him whenever they can by suits or otherwise in order to compell him to pay their most unjust and illegal claim; and they will do so unless they are restrained by injunction from this court, into which they came first for relief months before they instituted suit in Tennessee as aforesaid.

Complainant had well hoped to have these matters settled without suit, and he has entreated said parties time and again to adjust the same, and urged a submission of the whole matter to arbitration, and has requested them to take and receive in payment thereof the sum of eight thousand dollars, which he avers is every dollar he owes them, and here admits he does owe them that sum, and is willing for judgment to be entered in said suit at law therefor, or to pay it as the court may direct; but they have not answered nor will they hear to such proposition, but insist on coercing payment of the whole of said claim, all of
18 which is most unjust, and a great hardship and fraud on your orator.

Your orator would have been glad to have defended said suit at law if he could have done so fully and completely, but the accounts sought to be corrected and adjusted run through several years, are complicated and vague, and tainted with usury and illegal charges generally, and can be properly stated and adjusted only by a court of equity; and, besides, these transactions are known only to said defendants and your orator, and it is impossible for him to make proof of these things fully save by a discovery from them, and he cannot have a full and fair account of his dealings with them only by the means of such discovery. Moreover, defendants pretend from time to time that there is an express agreement signed by your orator authorizing them to make the charges aforesaid against him, which he now denies to be true and has always denied, and he has requested them to produce the same, but they have neg-
19 lected and refused and still do neglect, and your orator is unable to have the same produced if it be in existence, which he denies, only by order of this court.

Wherefore, and as your orator is without remedy at law, may it please your honours to make each of said parties defendant to this bill, process of subpœna, &c., and they and each of them answer this bill, particularly under oath, to the best of their knowledge, information, and belief, hearsay, &c., each and every allegation thereof, as fully as if here repeated, and they thereto interrogated, and they and each of them answer under oath particularly:

1st. Is not the law of Louisiana on the subject of interest as charged in this bill?

2d. Are not each and every one of the items of account specified in this bill as being usurious and illegal, directly contrary to such law, and are they not usurious?

3d. Did complainant ever by word, act, or writing, authorize defendants, or either of them, to charge him 8 per cent. interest, and two and one-half per cent. commissions for advances, acceptances, &c., as
20 set forth in the accounts exhibited with this bill; and are not such charges directly contrary to the agreement of complainant and said defendants?

4th. If so, state when and where and how. If by writing, produce the same by copy, with their answers, and have the original in the final hearing in this court.

5th. Did not complainant protest and remonstrate against the loose and indefinite manner said defeddants rendered him his accounts current on several different occasions?

6th. Did not complainant object at many different times to the illegal charges in his accounts current with said defendants, and did he not refuse to pay their account when rendered in May, A. D. 1858, because of such illegal and usurious charges?

7th. Is not the said N. E. Alloway, or was he not at the time of the

transactions hereinbefore-named were had, a member of the firm at Nashville, and of the firm at New Orleans; and were not said firms composed of the same members, and were they not the persons named herein; and was not the firm of N. E. Alloway & Co., of Nashville, a branch of the firm of McGregor, Alloway & Co., of New Orleans?

21 8th. Is not Exhibit C 1, to this bill, a true and correct copy of the mortgage executed by complainant to them as stated herein? And they be compelled to produce said original mortgage here in court, to be cancelled if they renounce all claims against complainant thereunder, and for answer from them as to whether they insist now or will ever insist on carrying said mortgage into effect; that they be compelled by decree of this court to take and submit to a judgment for said eight thousand dollars, which your orator consents may be rendered against him, or receive that sum by a day certain from your orator in full payment of their said claim, and said accounts be purged and cleansed of the usurious and otherwise illegal charges therein named and pointed out by this bill; that said defendants come to a fair and just accounting with your orator, for reference of such accounts to the master of this court, to be examined and stated according to law, and defendants be compelled to produce before such master the books of their firm, in which are contained the dealings and transactions between them and your orator, and said mortgage from your orator to them, and whatever other papers, &c., they may have in anywise connected with the same; and a writ of injunction issue forthwith against said defendants,

22 each and all of them, as well as Messrs. Bell and Carleton, their attorneys, commanding them to desist from further prosecuting their said suit at law in this court against complainant; and they, their agents and attorneys, be restrained from bringing any other suit or suits against him or his property in relation to said claim, until the final decision and decree in this court; and be restrained also from further prosecuting any suit wherever brought by them against him in respect of such claim; and, by order of this court, they be forced to come in and submit to this jurisdiction alone, and litigate their claim here and nowhere else; and, in order to get such writ of injunction, complainant here tenders the court of himself and Joseph Branch as his security, conditioned according to law to said defendants, in the sum of forty thousand dollars, which he prays may be approved of by your honour, and said writ issue thereon, &c., &c.; and when the amount is ascertained, and the same is adjusted according to law, they be perpetually enjoined from interfering with your orator about their said demand, said mortgage be cancelled by decree of this court, and for such other and further relief, &c., as he will ever pray.

23 JAMES H. BRANCH,
*Complainant.*

GARLAND & RANDOLPH,
*Solicitors.*

I, James H. Branch, do swear that the facts stated in the foregoing bill are true: so help me God.

JAMES H. BRANCH.

JAN'Y 20, 1860.

STATE OF ARKANSAS,
*County of Jefferson, ss:*

Before me, clerk of the circuit court of Jefferson county in the State of Arkansas, personally appeared the above-named James H. Branch,

and stated on oath that the matters and things set forth and alleged in the foregoing bill are true, to the best of his knowledge and belief, and on the information of others, he believes the same to be true.

In testimony whereof I have hereto set my hand as such clerk, and affixed the seal of my office at Pine Bluff, this 21st January, 1860.

[L. S.] J. DE BAUN, *Clerk.*

24 Filed 16th April, 1860.

R. SEARCY, *Clerk.*

Redocketed July 28, 1866.

CHA'S P. REDMOND, *Clerk.*

And on August 23d, 1860, the answer of James Bankhead was filed; which is in the words and figures following, to wit:

UNITED STATES OF AMERICA,
*Eastern District of Arkansas:*

In the United States circuit court for eastern district, September rules, 1860.

JAMES H. BRANCH
*vs.*
McGREGOR, ALLOWAY & Co.

The separate answer of James Bankhead, one of the defendants herein, to the bill of complaint exhibited against him and his codefendants, the said Nathaniel E. Alloway and George McGregor, by said complainant.

This respondent, now and at all times saving and reserving to
25 himself all manner of benefit of exception to the many errors and deficiencies in said bill contained, for answer thereto, or to so much thereof as he is advised it is material for him to answer, says:

1st. By way of preliminary to his answer, that he is now solely interested in the result of this suit, the said George McGregor having, since the commencement of the lawsuit referred to, retired from the firm of McGregor & Bankhead, and the said Nathaniel E. Alloway having long since sold his entire interest in the firm to respondent; and respondent further states that he can make full answer to complainant's bill, as nearly all of the transactions alluded to in said bill were had with respondent personally, he being a member of the Nashville house, and having personal supervision of the pecuniary transactions of complainant with said house, and can more fully answer the same than either of the other said defendants.

For the purpose of answering said bill fully and particularly as the same is informally stated, and to make full and complete discovery of
26 all things touching the various transactions alluded to in said bill, and in order to show more fully and clearly the utter falsity and recklessness of the charges made in the bill, this respondent will respond to the charges in the bill wherein complainant professes to give a history or statement of the mercantile transactions of defendant's firm in New Orleans & Nashville with complainant.

Respondents admit that, at the April term of this court, 1859, they did, as stated in said bill, institute their suit on the law side in the manner stated against said complainant for the said sum of twenty thousand eight hundred and eighty-six dollars and eighty-six cents,

which sum was most justly and legally due the respondents by complainant, on the twelfth day of March, 1859, embracing the balance of principal and interest due to defendants up to that date, as clearly and honestly and as legally as ever a debt was due a merchant by a customer in all time, and a debt, too, which complainant was under the most lasting obligations to pay, as will appear in this answer, notwithstanding the remarkable and unexpected and strongly erroneous
27 (not to use a harsher term) statement of complainant that he only owes about eight thousand dollars of the amount—a statement made too with all the facts and accounts before him, as will appear hereafter; and respondent now, once for all, says that all the statements of complainant in this respect are wholly untrue. Respondent states that the charge made that the accounts rendered against complainant from time to time, and the bills of particulars filed against him in the suit at law, were uncertain, obscure, or in any manner difficult to comprehend, more than ordinary accounts current of commission merchants or other business men, is utterly untrue in all its bearings and innuendoes; but states that the accounts were kept on the books of defendants in the usual manner of business men and merchants, by one of the most accomplished book-keepers of New Orleans. When defendants did business, and from time to time, as often as once a year, accounts current were made out and sent to complainant for his inspection and to show the cash balance due defendants at the end of each year, that he
28 might provide means for meeting said balance by having his bills discounted by the banks in Nashville, or elsewhere, according to his contract; and said accounts were always perfectly plain and intelligible to the commonest understanding, and in precisely the same manner as made by defendants for their other customers and by every commission merchant in New Orleans for the tens of thousands planters; and all the objections raised by the complainant to the accounts are mere pretexts to afford him some plausible pretense or excuse for not meeting his obligations fully, and paying the money which he honestly owes; and, as a full answer to all the allegations in this respect, and for the purpose of making full and complete discovery of the nature of the accounts which defendants seek to recover of complainant by their suit, respondent states that, some time in the early part of the year 1853, (and respondent protests against opening the accounts further back than the 28th of May, 1857, when there was a final settlement of all cash balances between the complainant
29 and defendants, and complainant then gave his draft in full settlement to close up the matter, as will hereafter appear, but for information he is willing to state the whole matter, said defendants being engaged in the commission business in the city of Nashville, in the State of Tennessee, and having a house also in the city of New Orleans, in the State of Louisiana, engaged in the cotton factorage business, complainant came to the house of defendants in Nashville, and represented that he desired to commence the business of cotton-planting in the State of Arkansas, and had some negroes but no lands, and but small means in the way of money; and, in opening a new place, it would require some heavy expenditures, and proposed to defendants to take his business and assist him in raising money, and, as his commission merchants, to receive his cotton and sell the same, furnishing him supplies for his plantation on their own credit, and to accept and endorse his notes and bills so as to enable him to negociate the same; and, defendants having every confidence in the honesty and in-
30 tegrity of complainant, and believing that, under all circum-

stances, he would comply with his contract written or verbal, and do what was right, with or without a contract, and knowing him to be well acquainted with the customs of commission merchants and their mode of doing business, did make an agreement with said complainant during said year, that they would accept his bills drawn on their branch house in New Orleans, in favor of the house in Nashville, or in favor of some one else, suggested by complainant, and, with the benefit of said acceptance or endorsement, to give said bills credit in the money-market; to sell them or permit said complainant himself to sell them to the banks or other persons, to meet balances due at the end of each commercial year, and to keep his account good; and it was further distinctly and positively agreed that said house in New Orleans should keep an account with said complainant and charge him with all bills for supplies and drafts paid and money furnished him, and to keep an interest account on same at the rate of
31 eight per cent. per annum and to charge acceptance at two and one-half per cent. on all bills accepted for him, and on all cash balances at the end of each commercial year—the interest agreed upon and charged in all cases being eight per cent. per annum, and the commission agreed upon being two and a half per cent. for accepting, and two and a half per cent. for advancing cash balances. This was positively agreed to by complainant, and acted upon for a period of six years, or while he did business with defendants, and these charges were made, and the accounts so made out were sent to him, and by him approved and ratified, and bills given by him at the end of each commercial year to meet the cash balances then due the house, which bill or bills were drawn on the house in New Orleans, in favor generally of the house in Nashville, and, after being accepted or endorsed, they were discounted by the banks in Nashville, or by other parties, and the net proceeds placed to the credit of said complainant on the books in Nashville, and then transferred to New Orleans, and placed to his credit there, to meet his indebtedness on drafts upon re-
32 spondents. In no case did respondents ever receive on' cent benefit from the discounts, but they accepted the bills, for which they charged two and a half per cent. in some instances, in many omitting to charge any acceptance at all; and then when the bills fell due, being always time bills, defendants as acceptors would have the bill to pay, which they did do, and charged complainant eight per cent. per annum interest on the cash so advanced until met by complainant with produce or a new bill, and in this manner the accounts were kept from July, 1853, until the twelfth of March, 1859, defendants never in a single instance charging complainant more than eight per cent. interest, and two and a half per cent. for acceptances of his bills, as was agreed upon, each and every charge being made fairly and honestly and strictly in accordance with the contract, and never (even when banks and monied men in 1857 and 1858 were charging twelve to fifteen and twenty per cent. for money) asking more than eight per cent. per annum on
33 the enormous debt which the complainant had shouldered upon them to carry, at a ruinous sacrifice to themselves, to protect complainant from ruin, according to his own admissions. Respondent now will take up the several accounts current referred to in said bill, and by his answer explain them to the satisfaction of the court, and by reference to the various letters and bills of the complainant show that he has not only been guilty of most vexatious delay in payment of an honest debt, but by his bill under oath denying what he has agreed to verbally for six years, what he sanctioned by his bills, drawn under his

own hand in writing, and of attempting by his oath to place defendants in the exceedingly absurd attitude of paying interest on from five to twenty-five thousand dollars per annum, at the rate of eight to fifteen per cent. per annum, and furnishing the same to complainant at the rate of five per cent. per annum, to carry on and extend his planting interest in Arkansas, and asks a court of equity to listen to such an
34 oath.

The account current as to bill showing six hundred and seventy-eight dollars and thirteen cents cash, due the 19th July, 1853, he admits to be correct, with the exception of interest. He agreed to pay eight per cent. on his accounts current, as will be shown hereafter by his own letters. This is the basis of all his transactions, so far admitted to be correct, and that he received the statement of his account in July, 1853, with the interest so charged, and made no exception to it, but settled it.

The next account is marked A 2, rendered 19th July, 1854, one year after the former, all of which is admitted to be correct, and to which he makes no exception only as to the interest on a draft drawn by himself in his own favor for thirty-six hundred and eighty-four dollars and ninety-nine cents, on which he says that interest was charged at twelve per cent., which occurred in this way: Complainant, on the 10th
35 January, 1854, made Mr. Bolton a payment on his place of thirty-six hundred and eighty-four dollars and ninety-nine cents. To enable him to do this he drew on defendants at sight for that amount in favor of Brown & Johnson, of Vicksburg, and defendants paid said check on the 13th January, 1854, and charged same that day with a hundred and eighty-seven days' interest up to date of account current, 19 July, 1854, at eight per cent. per annum. In order to meet this amount which was a special advance, complainant came from Vicksburg to New Orleans, and on 15th January drew his bill on defendants in favor of himself for the same amount at sixty days date, and endorsed it and authorized defendants to sell same in New Orleans money-market at any discount, and he, complainant, would lose the discount and pay the bill, and defendants could charge their acceptance. In this way complainant raised the money to pay for his place. Defendants had the bill discounted in the market at the rate of twelve per
36 cent.—never received one cent benefit themselves—and charged it to complainant, say seventy-eight dollars and sixty cents, that sum being the discount on the bill for sixty-four days, and he ought not now complain at what was his own act for his own benefit alone and of no interest to defendants, who never thought of taking a written agreement of transaction, (supposing of course, a man of honor would not deny his own acts and attempt to throw the odium of them on those who had faithfully served him and make them suffer his losses—losses too which he was compelled to submit to in order to raise money to buy the plantation on which he now lives.)

It will be seen that defendants charge him with the whole amount of said bill, thirty-six hundred and eighty-four dollars and ninety-nine cents and a hundred and twenty-four days' interest, a hundred and one dollars and fifty-five cents on his account current; and again, on the credit side of said account he is credited with same bill and same interest, this
37 being done that the whole matter might appear on the books.

The result of the whole transaction was this: Complainant was obliged to have thirty-six hundred and eighty-four dollars and ninety-nine cents. Defendants accepted for him at sixty days and enabled him to raise the money at twelve per cent. discount, which defendants

paid for him at his request and charged to him as usual; at the end of sixty days paid his bill and charged him eight per cent. interest. Defendants were in no way benefited by the discount on said bill, but paid the same to brokers at the request of complainant.

As to the item of two and a half per cent. for accepting and negociating twenty-two thousand three hundred and thirty-seven dollars and twenty-nine cents, the account itself shows that defendants had accepted for him to the amount of twenty-six thousand five hundred and six dollars and ninety-nine cents, and according to commercial usage and the contract with complainant, as will presently appear, defendants
38 had the perfect right to charge two and a half per cent. for every piece of paper accepted for complainant as a compensation for their credit in this case without making a separate charge of two and a half per cent. on each item accepted. Defendants footed up the general sum and took therefrom the amount of the proceeds of the cotton shipped, say one hundred and fifty-nine bales, and only charged him two and a half per cent. acceptance on the amount not met with produce. There are other credits to the account, but these credits are the proceeds of the bills drawn by complainant on defendants and accepted, and the credit of that acceptance made them sell in bank, and nett proceeds were placed on account to make up credits, and of course on those bills so accepted, they were entitled to their two and a half per cent. for acceptance. If not, what compensation do they get on account of accepting?

They charge no interest until they pay the bills, and then only eight per cent.; and it will be seen by reference to the account that
39 they accepted more than twenty-two thousand three hundred and thirty-seven dollars and twenty-nine cents of complainant's paper. Complainant also objects to the charge of eight per cent. interest on the balances due, and says he had no knowledge that they were charging him eight per cent. On the very heading of the account there is a statement that the interest is charged at eight per cent.; at the foot of the account current where it is carried down, it is stated that the balance of interest at eight per cent. per annum is six hundred and twenty-eight dollars and fifty-seven cents.

Complain't says he received their statement at the time, and appends it to his bill, and yet, in his sworn bill, says he did not know they were charging him eight per cent. interest per annum. Respondent charitably supposes he had forgotten the facts, for with this knowledge he closed the account by his bills to meet the balance due; and in his letter
40 to the house in New Orleans, dated December 29, 1855, he writes: "That, in my agreement with your house in Nashville, it was expressly understood that they would charge me but eight per cent. interest." Referring to this account, a true copy of which letter will be filed in this case, marked Exhibit O, No. 1, (the original letter being held subject to the order of this court and inspection of the parties,) an express admission in writing that he was to pay eight per cent. interest by his agreement with the house when he commenced business with them—an admission that of itself shows the utter falsity and recklessness of all the statements in the bill, "That he never, by word, act, or writing, authorized defendants to charge him but five per cent., according to the rates of judicial interest in Louisiana." And respondent now states once for all that five per cent. interest per annum was never dreamed of by complainant or defendants, or ever so much as thought of in any of the transactions between them, and no other interest but eight
41 per cent., and complainant well knows this; and he never thought

of being charged five per cent. until he determ'ed not to pay the large debt contracted by him, and found himself either unable or unwilling to do so when he for the first time discovers that the laws of Louisiana only allow judicial interest at five per cent., and then gravely asks a court of equity to disregard a solemn contract entered into by him to declare his own agreement fraudulent. Why did he not discover this wonderful law during the six years he was borrowing money at such a heavy rate? Respondent refers to same letter, Exhibit O, No. 1, for an admission as to the right to charge two and a half per cent. commission for advancing balance against him. These admissions being only one item of proof of these facts above, are the only objections to said statement, the residue is admitted to be true; and respondent now states that the same is correct in every particular, all the drafts referred to
42 were paid, all the invoices of goods were supplied, and the items of freight and insurance were paid by defendants at the request of complainant, and for his use.

Complainant charges that, on the 4th August, 1855, another and third account current was sent to him, showing his indebtedness for cash balance then due to be six thousand one hundred and fifty-three dollars and thirty-four cents, all of which is admitted to be correct, with the exception of the various charges of two and a half per cent. commission for accepting his drafts. These drafts were all drawn by complainant on defendants, and by them accepted in order to enable him to use them. They did charge him the usual rate for acceptance, and it is fully worth that sum. They could not afford to do it for nothing; at least it would be a poor business to charge nothing for such services. Such a course would break almost any one, and complainant certainly could not
43 ask it. A man of his wealth certainly should be willing to pay for such important services; important to him, as his letters hereafter referred to will show. The item of one hundred and thirty-two dollars and forty-eight cents for advancing five thousand two hundred and ninety-nine dollars and two cents, was charged strictly in accordance with contract on cash balance. But if the court should decide, and complainant should have the conscience to object to it—and from his bill it seems he has no conscience on the subject—then defendants submit, but at the same time beg leave to make full charges when they have the right to do so for accepting, to compensate them. If the law is to defeat these contracts, they ask the full benefit both ways. As to the objection to the interest account, it has been fully answered, and it will be seen on examination that defendants kept a regular interest account, in which they charged interest by days on every item paid
44 at the rate of eight per cent. per annum, and gave complainant credit for interest at same rate and in same manner, and struck a balance of interest, and charged the balance against him. His account being very large, the interest was always against him. At this point complainant repeats his silly charge as to the "loose manner" of doing business, which is a strange confession of ignorance in one who has displayed such keen sagacity in ferreting out gross fraud when the day of payment has come. To take his bill as a specimen it would appear that he was quite familiar with all accounts. In a word, this charge of "loose accounting" is absurd. The accounts are all made out in the most approved manner by the best of book-keepers. The truth is, the accounts had grown so large, and complainant had fallen so far short in meeting his liabilities, that he was no doubt ashamed to acknowledge that he understood his accounts. About this time—December, 1855—complainant's necessities were great, and his appetite for money voracious,

45 as will appear from copies of his letters hereto appended as exhibits, viz, his letter November 15th, 1855, marked O, No. 2, and June 8th, 1855, marked O, No. 3, in which he betrays his ideas of business integrity. And further, in his letters, "March 20th, 1856, Exhibit O, No. 4," "March 24th, 1856, Exhibit O, No. 5," "November 24th, 1855, Exhibit O, No. 6;" all the originals of which are held subject to the order of this court, and are referred to in order to show the great necessity the complainant was under for money, and how defendants were compelled to furnish it to him by their acceptances.

In April, 1856, defendants sent complainant a fourth account current for preceding commercial year, he having got his crop to market a little sooner than usual, and the custom being to make up his accounts as soon as the crop was in and sold, so that the cash balance might be ascertained and he could give a bill to meet it, according to his contract. In this account current he is charged with a cash balance on the 26th April, 1856, of fifty-five hundred and nine dollars
46 and thirty-six cents, which was the correct and true amount due by him in cash on that day. The account is made up of balance from a previous account, and from various bills drawn by him, accepted and paid by respondents, as appears from the account, amounting to upwards of thirty thousand dollars, and of items for goods and supplies furnished him and shipped to him for the use of his plantation, and moneys furnished him to pay expenses of himself and family, all making up the general sum of thirty-three thousand eight hundred and nineteen dollars and forty-eight cents, the only item of which he objects to being a hundred and fifty dollars for accepting his draft drawn in favor of Joseph Branch, and cashed by Thomas Martin, esq., for six thousand dollars. This draft was drawn by him on defendants, and sold by him to Martin, as agreed upon between Martin and himself, at a heavy discount, and the nett proceeds placed to the credit of complain-
47 ant with the house at Nashville, and by them, say N. E. Alloway & Co., transmitted for the credit of complainant at New Orleans. Defendants did accept said draft at complainant's request, (see his letter referred to,) and of course charged him the amount of acceptance, which he asks us to do for nothing. Our contract was to charge him for such acceptances. When the bill matured, 10th December, 1856, we paid full amount of said bill to Thomas Martin, esq., the holder of the same, and charged complainant with amount, say six thousand dollars. Defendants had nothing whatever to do with the rate of discount. If he had discounted it at the rate of twenty-five per cent. per annum, defendants could not say a word. They merely accepted or endorsed his bill for six thousand dollars, on which he was enabled to raise money, and charged him two and a half per cent. for the service; and said bill when due, complainant having failed to comply with the promise to meet it, (see his letters,) they, the defendants, had to
48 meet and pay the same, and only charged him eight per cent. on the amount of said bill, although money was then worth to them twelve and a half per cent. per annum. The other item of objection to two hundred and fifty-four dollars and fifty cents for accepting or advancing the cash balance is of the same character. It will be seen that we had accepted for him to the amount of about twenty-four thousand dollars, (besides the six-thousand-dollar draft held by Martin,) on which we charge him no acceptance, but only charge him acceptance on the amount of the cash balance then due, absolutely making the account less in the sum of about six hundred dollars than it ought to be, which was done as a special favor to him, the interest account being

the same as usual in the previous accounts and wholly free from objection, as per contract. All the other items are correct, and made at the request of complainant and at his earnest solicitation. (See letters.)

49 The credits are made up of one hundred and ninety-one bales of cotton, in place of three hundred bales, as promised, and of moneys received from A. E. Alloway & Co., defendants' house in Nashville, which happened in this manner: Complainant would draw his drafts and have the same accepted or endorsed in order that they could be negociated by complainants or defendants at Nashville, or other points, at his request, and sold to brokers or banks, and proceeds of the same placed to the credit of complainant, on the books of defendants, at Nashville, and then transmitted by them to the house in New Orleans, for the credit of complainant, to meet his sight and time drafts on said house, which were drawn and accepted; and in this way he met a portion of his large indebtedness. The interest-balance is small—though at eight per cent., and not run out in full—yet is correct in every respect; and the cash-balance due on that day, viz, 26

50 April, 1856, was fifty-five hundred and nine dollars and thirty-six cents, without standing acceptances not matured, for fifteen thousand dollars, in outstanding drafts, running to maturity, the same being accepted by defendants, which amounts will come into the cash items of the account current rendered the 28th May, 1857, by defendants. And on said day, viz, the 28th May, 1857, another account current was rendered for preceding year by defendants, more than one year from the date of the preceding account, wherein the total debits are twenty-six thousand five hundred and forty-seven dollars and ninety-

51 one cents, and credits twenty-one thousand four hundred and three dollars and twenty-nine cents, leaving a balance due in cash, on that day, viz, 28th May, 1857, of five thousand one hundred and forty-four dollars and sixty-two cents, leaving bills to mature, during the next commercial season, amounting to twelve thousand five hundred and forty dollars, making complainant's total liability, in cash, and acceptances running to maturity, on defendants, the sum of seventeen thousand six hundred and eighty-four dollars and sixty-two cents. And to show that he did understand something about his accounts, and was not so wholly and innocently ignorant as he now swears himself to be, respondent refers to his letter of January 27th, 1857—a true copy of which is exhibited as O, No. 7, the original being subject to the order of court—wherein he admits that, on that day, he owed defendants about twenty-four thousand dollars, showing that he had somewhat of a correct idea of his indebtedness to pay said amount.

52 He estimates his crop at twelve thousand dollars, and from looking at account sales of same, the nett proceeds of which will appear on his account current of the 28th May, 1857, it will be seen that the proceeds of his crop fell short of complainant's estimate about two thousand dollars. This account current is made up as all the others preceding it, and is correct in all respects; and the only objection raised even by the nice discrimination of the complainant, is as to the commission for accepting forty-seven hundred and fifty-two dollars and sixty-one cents, and the usual absurd and shameful charge concerning interest, which has been set fully at rest.

The commission for accepting was only on the balance of complainant's account, when defendants had the right to charge two and a half per cent. on the whole amount accepted, say seventeen thousand seven hundred and ninety-five dollars, which would make quite a difference against him; but out of mere favor to him it

was not charged. And if the court will rule out the small sums charged for advancing, according to contract, in one or two instances, de-
53 fendants would then ask the liberty of charging for acceptance on all bills accepted and paid by them, as per account current rendered complainant by defendants on the 28th May, 1857. The balance then due, as per account rendered on the 28th May, 1857, was five thousand one hundred and forty-four dollars and sixty-two cents, due as cash on that day. And said complainant did execute and sign his bill, dated 28th May, 1857, at ten months date, in favor of N. E. Alloway & Co., on and accepted by McGregor, Alloway & Co., for fifty-five hundred and seventy-two dollars and thirty-two cents; which bill was given in full satisfaction of cash balances due defendants on that day, as per account current rendered. And complainant, after examining his account, which was fully examined by defendants' letter, (Exhibit O, No. 8,) did sign the bill and return the same to the house in New Orleans, as appears by his letters of 28th and 29th June, 1857, copies whereof are exhibited as O, No. 9, and O, No. 10, the originals being held subject to the order of this court; and said bill
54 was received and given as a full closing up of cash balance, and was so intended by complainant, and was a full recognition of his account; and said bill was received by defendants and negociated and paid and so entered on their books, as will appear by true copy of said bill exhibited as O, No. 11, the original being held subject to the order of this court, and by an abstract from defendants' books of that date, being an account or statement sent complainant at the time, but which he has not thought proper to exhibit with his bill, herewith exhibited as O, No. 12. So respondent says that complainant on that day closed up his account and gave his bill for the amount, thereby recognizing, in the fullest manner possible, the contract originally made and the correctness of all charges up to that time; and from his letter heretofore exhibited is a recognition of the terms of the business arrangement; and it comes with a bad grace from complainant now to deny the whole matter, and attempt, because defendants trusted to his
55 honor at the beginning and did not require his written contract, to avoid the payment of the debts which he not only honestly owes, and which he has over and over again, by word, act, and in writing, recognized and promised to pay and has actually paid, up to 28th May, 1857; for when that bill was given complainant did not owe defendants a single dollar in cash.

This was the beginning of a new account, and this is the reason why defendants protested against going behind this settlement. From this point ought and does a new account commence, as will be seen by the account current sent complainant May 22d, 1858. The first item being charged in June, 1857, though complainant has left out a statement or account, dated 9th July, 1857, which was sent to him, (Exhibit O, No. 12,) showing said settlement; but said statement was included in the bill of particulars filed in the lawsuit, and said complainant must have fully understood said account from the fact that he knew in January previous that he owed said defendants some twenty-three or twen-
56 ty-four thousand dollars. He had received the previous statements, and, if he had any memory at all, he must have known how many drafts he had drawn and how many goods he had ordered; and defendants now rely on that settlement as a full recognition of the account up to that date. Having gone into every transaction up to that time, and shown that, according to the contract made, the accounts were all correct up to that date, they now show a recognition and set-

tlement of the same by complainant giving his draft to cover the balance due on that day; and defendants now deny his right to go behind said settlement or to open said accounts, except for information, notwithstanding all the business was transacted under the same agreement and arrangement, and the account was continued from that time in precisely the same manner.

And respondent, further answering said bill, says, as to said account current which complainant says was sent to him in May, 1858, that the same is in all respects correct and true, and he supposes complain-
57 ant admits it to be correct, as he objects only to the items of commissions and interest. But respondent states that it is a new account, commencing on the 9th June, 1857, the cash account having been closed on the 28th May, 1857, by said complainant's draft. The first item on the new account was for goods furnished, four hundred and fifty-one dollars and six cents, and so on, each and every item whereof is just and correct, and all the acceptances therein named were bills drawn by complainant on defendants, and by them accepted, and many of them paid before means were received to meet them, the whole debt being twenty-three thousand four hundred and ninety-one dollars and ninety cents, which includes the items of two hundred and forty-two dollars and forty-two cents, for accepting nine thousand six hundred and sixteen dollars and seventy-three cents, and same for advancing. The acceptances cannot be objected to; they are too well proven,
58 and are not illegal. If the court should decide the commissions for advancing to be illegal, then defendants must lose it; but this was their contract, and they claim the full benefit of the law to recharge for acceptances on the whole amount accepted, which would be nearly twenty thousand dollars in this account alone, and would swell their commissions to five hundred dollars more than is charged, which they have the right to do under the contract. So this account is correct in all things; one item being the very bill for fifty-five hundred and seventy-two dollars and thirty-two cents, given to close up previous years' account, which was paid by defendants at maturity. The credits are for cotton sold, and some money; proceeds of bills drawn by complainant on defendants, and accepted, and sold by request of complainant to the banks or otherwise, and proceeds were placed to the credit of complainant's account, and were transferred to New Orleans for
59 his credit, with the house there, in order to meet his bills running to maturity. After giving him full credit for everything, charging him interest at eight per cent., and allowing it at the same rate on credits, his balance due May 22d, 1858, was ten thousand and forty-seven dollars and fifty-nine cents cash on that day, by the account current furnished him and exhibited as a note with bill; and defendants adopt these exhibits to the bill as his exhibits, so far they being correct copies, and showing the true state of the accounts between the parties. This bill was sent to complainant, and this closed all further transactions between the parties; at least no further bills were drawn except two, as stated afterwards. No more cotton was shipped. There were several outstanding bills which were drawn at previous dates, and which have not yet matured, and which were afterwards met and placed to account of complainant when paid, viz: There was a bill drawn by complainant on the 2d July, 1858, on defendants, for two thousand dollars at five months date, which was accepted and discounted, and nett
60 proceeds placed to his credit on the ten thousand and forty-seven dollars and fifty-seven cents account; and a draft drawn on the

12th February, 1858, at thirteen months date, for three thousand dollars, which was not used or placed to his credit until the 14th August 1858; and, after carrying interest account up to 18th September, 1858, it made the interest account and principal balance, and cash due on that day of fifty-five hundred and fifty-four dollars and thirty-seven cents, which defendants were then entitled to as cash, and on which they from that time could only charge eight per cent. interest, and an account current was made up to that day showing cash balance due by complainant on that day, and showing also outstanding, and not then due, complainant's bills drawn on defendants and accepted by them, and which they were compelled to meet, amounting to fourteen thousand dollars, as follows: Bill due the 2d of December, 1858, for two thousand dollars, as above referred to; a bill due 12th 12*th*
61 December, 1858, for three thousand dollars; a bill due 12th January, 1859, for three thousand dollars; a bill due 12th February, 1859, for three thousand dollars; and a bill due 12 March, 1859, for three thousand dollars: the last being the one referred to above as not discounted until 14th August, 1858. All of which bills were promptly paid by defendants at their maturity, and charged up to complainant in statement made 12th March, 1859, referred to hereafter; of which facts the court can be more fully advised by reference to true and perfect copies of said several bills hereto annexed, and marked Exhibits O, No. 14, O, No. 15, O, No. 16, O, No. 17, and O, No. 18, respectively, and ask the same to be taken as part of this answer, the originals being held subject to the order of this court, and inspection of parties. So this closed up his account until the 18th of September, 1858, a statement whereof is appended, marked Exhibit O, No. 19, when complainant was requested to pay it, or provide means for so doing, but he wholly
62 failed to do so. And on the 12th of March, 1859, complainant having wholly failed to pay his accounts, and now having further failed and refused to pay his accounts by shipping defendants a single bale of cotton, but having, in utter violation of his contracts, solemn pledges, and good faith, shipped his cotton to some other house, and left us a heavy debt to carry and nothing to meet it with; having in fact taken cotton which was not only pledged to defendants by his word of honor, but upon the credit of which, alone, he had induced them to let him have money, and indorse and accept his bills, and which was mortgaged to them by deed of record, and belonged to defendants by law, and used it for his own and other purposes, thus violating pledges, good faith, and the criminal laws of Arkansas, defendants made up his accounts to that date, wherein they charge him with the cash balance of the preceding account, say, fifty-five hundred and fifty-four dollars and thirty-seven
63 cents, and with the five several drafts referred to above, amounting to fourteen thousand dollars, with the sum of two hundred and forty-nine dollars and thirty-five cents, being amount of complainant's account for moneys furnished him by the Nashville house of N. E. Alloway & Co., and which was to be charged to him at the New Orleans house, by his request; a statement of which is filed as Exhibit O, No. 20, and with the sum of three hundred and fifty dollars, as commission for accepting fourteen thousand dollars, the drafts aforesaid, and to which defendants were entitled by law, usage, and the contracts of the parties, admitted and proven, as heretofore stated, and the further item of three hundred and fifty dollars, commissions for advancing fourteen thousand dollars not met with produce, which was understood to be in strict accordance with the contract with complainant. Still, if the court should rule it to be illegal, as stated, they will submit. And they

64 further charge him with three hundred and eighty-three dollars and fourteen cents for interest on the various items comprising this account from the date of their respective payments, which interest is calculated by days, at the rate of eight per cent. per annum on each separate item, all of which footed up an amount of twenty thousand eight hundred and eighty-six dollars and eighty-six cents, (20,886.86,) on which he was sued in this court, on the common-law side, as stated in the bill, and the accounts so made out, and continued from July, 1853, to March, 1859, and every item distinctly and positively accounted for, and established, was strictly due to defendants on said day, and legally due, except the item of three hundred and fifty dollars in the last-named account, which said last-named statement of 12th March, 1859, is filed as Exhibit O, No. 21. And the sum of one hundred and thirty-two dollars and forty-eight cents, in statement marked A, No. 3,
65 to complainant's bill, which may, under the recent decisions of the court be declared usurious, though made under the sanction of a contract; and defendants will, perhaps, have to submit to loss, unless permitted to recharge for accepting all complainant's bills, which they can do strictly according to law, and which will make the account against complainant much larger; still they submit these matters to the court.

Respondent having now fully stated every particular connected with the transactions of the house of defendants with complainant, and shown how each and every item occurred, and fully purged the same of the odium and grossly fraudulent character attempted to be thrown around it by this complainant, whose conscience has become enlightened and sensitive only when he is called upon to pay back that "enormous" sum of money which he has begged out of defendants by the most faithful and earnest promises, who now in his great zeal to defeat and
66 delay the payment of his debts, influenced by the same spirit that governed his conscience in attempting to defeat the Bolten debt, (see his letter of June 8th, 1855, marked O, No. 3,) swears that he "never by word, act, or deed," agreed to pay eight per cent. interest per annum on his indebtedness, or two and a half per cent. for advancing, and had no knowledge of such charges being made; and, with a flourish of moral indignation, calls upon defendants to answer when and where, utterly oblivious of his contracts, his letters referred to, and his settlement of the 28th May, 1857, or utterly careless of the correctness of his oath—and, right here, in answer to his solemn oath, we will respond, in addition to his acts in writing, his bills with these charges made without complaint for five years, which is pretty good evidence of his agreement to pay them; and, referring to his letter of March 12th, 1854, Exhibit O, No. 13, wherein he says, "I will willingly pay you the
67 two and a half per cent. on the balance against me after sale of my crop;" and to his letter of 29 December, 1855, Exhibit O, No. 1, wherein he says, "In my agreement with your house in Nashville, it was understood that you would charge me but eight per cent. interest, and two and a half per cent. on the balance against me," he is answered. Comment is unnecessary. Here is the written admission and agreement when he wanted money; there the sworn statement when declining to pay. Respondent might well have rested his answer here; but, in response to the particular interrogatories propounded to him by complainant, he begs leave to answer for himself, and on behalf of the house of which he was a member:

1st. In answer to the first interrogatory he says: The law of Louisiana provides that five per cent. shall be the judicial interest when none

other is contracted for, but also provides for conventional interest at the rate of eight per cent. per annum, by contract.

2d. In answer to second interrogatory: That they are not contrary to law or usurious. A contract was expressly made between
68 *between* the parties to charge complainant eight per cent. interest on cash accounts, strictly in accordance with the statute of Louisiana, as to conventual interest, which contract was admitted, ratified, and confirmed in writing; and it is certainly not usurious to charge two and a half per cent. on acceptances; and in no case has complainant been charged more than eight per cent. per annum; interest, and ten and a half per cent. commission for accepting, and not always even the two and a half per cent., for frequently two and a half per cent. was only charged for accepting and negociating cash balance at the end of the year, when they had the right to charge on the whole amount.

3d. To the third interrogatory he says, most solemnly and positively he did so agree by word, act, and writing, to both the eight per cent. interest charge and the two and a half per cent. charge, as has been most fully shown in this answer; and such charges are not
69 contrary to the agreement between complainant and defendants, but strictly in accordance with the same, as complainant ought well to know, but defendants charitably suppose he must have forgotten the agreement.

4th. To the fourth interrogatory he says: He agreed to pay them in word in 1853, and many times since by act, when the accounts were sent to him each year with these charges included, for five years, and he approved them and paid them without one word of complaint in writing, by the two letters of June 8th, 1854, and 29th December, 1855, true copies of which have been exhibited with this answer as Exhibits O, No. 1, and O, No. 13, and the originals will be filed on the hearing, side by side with his bill. There is a beautiful consistency between them.

5th. To the fifth interrogatory he answers: He did not.

6th. To the 6th interrogatory he says: Complainant did, on one or perhaps two occasions, say that he did not exactly understand the
70 account, owing to the confusion of his courting and marrying, (see his letter,) but never objected to illegal charges. He did complain of the manner of charging the two and a half per cent., but because he did not seem to comprehend on what balance it was to be charged. By his letter of the 8th June, 1854, he states it to be on general balance, after deducting the cotton crop, but by his letter of the 29 December, 1855, he did object to this and claimed the other credits. This was explained to him, and he seemed satisfied, at least continued the account and continued getting money at same rates and charges. He did not refuse to pay in May, 1858, because of such illegal and usurious charges. During the spring of 1858 complainant had permitted his account to become so heavy defendants could not sustain him, but told him he must stop drawing. When complainant determined to quit the house he came to Nashville in August, 1858, and proposed to settle the
71 full amount of the account without one word about the illegal or usurious charges, and defendants were very anxious for him to settle with them. He proposed to defendants to give his notes at one and two years, with *with* his brother, Joseph Branch, as security, and said Joseph Branch agreeing to be his security, defendants finding themselves unable to do better, and in order to get their money, agreed to the settlement, provided he would give Joseph Branch and Mr. Robert Williams, the latter his brother in law, as securities. He replied he disliked to ask Mr. Williams to do so, but remarked he would go to

Alabama and return in September, and would make a full settlement of his accounts; not one word said all this time about usury, fraud, or any other objection. Complainant did not return to Nashville, as promised, or did he make any other offers to settle. About this time he must have begun to find himself unable to pay. Defendants waited until all
72 the bills which complainant had drawn matured, say in March, 1859, and made up their account for that commercial year against him, and sued him, and they could not do otherwise. Complainant had saddled upon them a heavy debt, refused to pay it, or arrange it, refused to ship his cotton, according to his solemn contract—in effect taking money out of their pockets, and wrote them to make their money as they could; and even now it seems he is determined not to pay it, but swears he does not owe it.

7th. To the seventh interrogatory he says: Nathaniel E. Alloway was a member of the firm in Nashville and New Orleans, but sold out before this suit was brought, to the other two defendants, and at that time had no interest in the suit. The same parties composed the two houses. The New Orleans house was considered a branch of the house in Nashville, and respondent residing in Nashville had supervision of both houses. Many of complainant's negociations were made in Nashville, al-
73 though the accounts were kept in New Orleans.

8th. To the eighth interrogatory he says: Exhibit C, No. 1, is a correct copy of the mortgage executed by complainant, and they now file the original mortgage herein, as Exhibit O, No. 26, and will ask to have the same foreclosed.

Having answered fully the special interrogatories, respondent now states, by way of general answer, in explanation of the various transactions of complainant and defendants, that complainant was a small planter and designed opening a new place, and stated to defendant, when he first made the business arrangement, that he would want a large sum of money more than he would be able to meet with crops, but would have to let a heavy balance lie over each year; and as defendants were not engaged at all in loaning money, but in a commission business, it was agreed by the parties that whenever at the end of a commercial year there was a balance against complainant,
74 or whenever during the course of said year he should wish a large sum of money over and above his supplies for his plantation, that he should draw bills on time on the house in New Orleans, in favor of, generally, N. E. Alloway & Co., the house in Nashville, and that those bills should be accepted by the house in New Orleans and endorsed by the house in Nashville, and then that they should be discounted in the money-market, most generally by the banks in Nashville, by request of complainant, at bank rates, which varied from seven to nine or ten per cent. per annum; and the nett proceeds of these bills so discounted would be placed to the credit of said complainant as so much cash, at the house in Nashville, and then transmitted by said N. E. Alloway & Co., for the credit of complainant at New Orleans, and this accounts for the various items of credits in his accounts of cash from N. E. Alloway & Co. With this discounting business defendants had nothing whatever to do, except as agents sometimes, in
75 effecting the negociations for complainant at his own request. All defendants had to do was to accept the bills and endorse them to give them credit, otherwise they could not have been negociated at all, and when they were matured defendants would pay them, and charge the full face of the bill to complainant, and charge him two and a half per cent. in some instances for accepting the bills, only in one

instance making a full charge in the account for 1854; and in the account for 1855 charging him on the balance after deducting cotton crop; and in 1856 charging only upon the cash balance at the end of the year, although the bills were not met at maturity. Yet defendants had the right by their contract and under the law to charge two and a half per cent. on any piece of paper accepted; and when these bills were so charged up at New Orleans, where by agreement the accounts were to be kept, interest at the rate of eight per cent. was charged on each item.
76 from the date of its payment until the day of making up and rendering the account, and in like manner interest was allowed on each item of credits, from the day it was received by sales of cotton or otherwise, at eight per cent., until the day of making up the account, and thus a balance of interest kept at the invariable rate of eight per cent., according to the strict commercial rule. And at the end of each commercial year a balance of interest was struck, as well as a balance of principal, and the two balances thus made were charged up to complainant, and carried into the account for the next commercial year. And the only compounding of interest ever made was in this way, settling the account once a year. This was the agreement between the parties, only it was agreed that complainant should pay it up every year, in the manner stated above, which he wholly failed to do, except in one instance in May, 1857, which will be referred to. To explain more fully the system, and to show more fully the truth of the above statements,
77 respondent refers to letters of complaint, dated December 16th, 1853, a copy of which is exhibited as O, No 22, to show that he was largely indebted and needed money; letter of October 16th, 1856, Exhibit O, No. 23, to show that he negociated with banks and monied men himself, particularly the Martin draft for six thousand dollars, and made the discoveries of which he complains, (Exhibit O, No. 24,) to show his wants, he speaks of three hundred bales of cotton, and only shipped one hundred and ninety-one; and to his letter of March 3d, 1858, just before he closed his account, to show how much he needed money, giving authority to sell his bill on best terms we could; thus showing the truth of all the statements in this answer. And to place the nett amount to his credit, and stating that if it was the last act of defendant's life, they must pay his bills, and any interest that it would cost he would pay. (See Exhibit O, No. 25, originals all to be filed if demanded.) And money at this time, March, 1858, just after the
78 panic of 1857, was worth from twelve and a half to fifteen per cent. Yet defendants paid his drafts, and charged him eight per cent., and because, at his own request, they sold his bill at nine, ten, or more discount, and placed the same to his credit, to meet his heavy liabilities to the house, then largely over ten thousand dollars, he now complains and says you have no written contract to prove that I did these things, therefore I will not pay what I honestly owe you. By a show of honesty and many promises I have got your money without putting my contract in writing, and now I will take advantage of your confidence and refuse to pay you. But justice will prevail. In an unguarded moment he has committed to writing his contract, and now defendants ask the full benefit of that contract.

Respondent further says in regard to the settlement of the 28th May, 1857, and to show the agreed mode of doing business, that, on
79 that day, the account current showed a balance due in cash of five thousand one hundred and forty-four dollars and sixty-two cents. Now, to close up this balance, defendants, by a letter of the 30 May, 1857, (Exhibit O, No. 8,) sent to complainant a bill to be signed,

drawn on McGregor, Alloway & Co., in favor of N. E. Alloway & Co., for fifty-five hundred and seventy-two dollars and thirty-two cents, at ten months date, and by memorandum at foot of their letter showed the bank rate of discount to be nine per cent., which would be charged by the banks to negociate this draft. Discounting it at nine per cent. per annum for ten months, it just paid five thousand one hundred and forty-four dollars sixty-two cents, amount complainant owed. In this way he paid his balances. The bank made the discount, not the defendants. It was stated in a letter that nine per cent. was the bank rate, and he would have to suffer that rate, showing the plan of the whole matter, which was explained to him in full. The com-
80 plainant signed and returned to defendants said bill of exchange without one word of complaint, and thus sanctioning the whole matter, as appears by the bill itself (O, No. 11) and his two letters, O, No. 12 and 13. In this case the bill was discounted by the Union Bank of the State of Tennessee, in Nashville, I. Correy, esq., cashier.

Respondent having thus fully answered the bill in all its particulars begs leave to say that the whole business was under the same agreement, and defendants are entitled to eight per cent. interest on all their cash balances until paid, as it is fully admitted in writing that this was the rate of interest agreed upon and ratified in writing. Respondent now submits to the jurisdiction in chancery selected by complainant; is willing and asks to have a decree rendered for the amount due defendants, which can be ascertained by the court without the intervention of a master, as the accounts current and exhibits, with the bill
81 and answer, as explained by the answer, make the case perfectly plain, and there can be no question except as to the two items of commissions for advancing, one of which is coerced by the settlement of the 28th May, 1857, and the other will have to be lost unless the court will permit defendants to recharge the account for acceptance.

So defendants pray a decree against complainant for the whole sum of $20,886.86 *doll's* with eight per cent. interest from the 12th day of March, 1859, until paid, and when such decree is rendered they pray a decree of foreclosure of said mortgage on said land and slaves, as set forth in said bill, and that complainant's equity of redemption therein be foreclosed, and unless said debt and costs and interest be paid on a day certain that said property be sold by the marshal to pay said indebtedness and other and further relief as the court shall seem fit and equity and good conscience shall demand, under the facts and
82 circumstances of the case.

BELL & CARLTON,
*Solicitors.*

Circuit court of the United States, district of Middle Tennessee.

This sixth day of August, A. D. 1860, personally appeared before me Jacob McGavock, clerk of said court, James Bankhead, one of the defendants in the foregoing answer named, and, being duly sworn, makes oath that the matters and things stated in said answer of his own knowledge are true, and those matters and things therein stated as of the information of others, he believes to be true.

JAMES BANKHEAD.

Subscribed and sworn to before me the date above.
[L. S.] JACOB McGAVOCK, *Clerk.*

Filed 23d August, 1860.

R. SEARCY, *Clerk.*

83 Which exhibits are in the words and figures following, to wit:

(Copy of Exhibit O, No. 1.)

RED FORK, DEC. 29th, 1855.

Mess. MACGREGOR, ALLOWAY & CO.,
*New Orleans:*

Mr. Bankhead passed down the river a few days since in good health, &c., on his way back to Tennessee.

I leave in the morning for Courtland, Laurence C'ty, Alabama, on a visit with my wife to her relations, any communications you may have to make for a month or six weeks, please direct to that point. I shipped you a few days since thirty odd bales, the receipt of *of* which you have not acknowledged. Will make a further shipment by the first boat after Christmas is over. I am in receipt of yours informing me that Mr. Martin had cashed my drafts for $6,000; please pay any drafts that I have previously drawn and been refused by you, and any that I may draw against it.

84 In the bustle of courting and marrying I neglected to examine your last a/c current of August the 4th. There is an important error in it as well as in the previous one, twelve months before. In my agreement with your house in Nashville, it was expressly understood that they would charge me but 8 per cent. int., and 2½ per cent. on the balance against me. In your first a/c current you have charged me 2½ per cent. on the amount after my crop was deducted; there were other credits which should be allowed or rather deducted, as you will see by looking at the credit side of my account. I drew Mr. Alloway's attention to this on our settlement in Nashville, & he told me to draw your attention to it and you would set it right. This I neglected to do, forgetting to carry my account down to N. O. when I went down.

In the last account current of August 4th, you have charged me 2½ per cent. for accepting each and every item, when like the previous one it should have been 2½ on the balance. In consideration of my
85 balance being a large one and the times tight, I furnished your house with blank bills to keep my account up, thus submitting to compound interest. Not knowing the length of time the bills had to run, I cannot determine the rate of interest you charged me, if more than 8 per cent. you will of course correct it. To compound at this rate is hard enough, but at a higher one you will not ask me. In this account also, there are other credits to be allowed besides my crop.

I wish the last a/c made out with the names of the parties in whose favor the drafts were drawn. I keep it as a reference. Seeing these mistakes, I have looked further and find that you have charged me insurance on cotton on the river, at the rate of one per cent., when my brother pays much less—½ or ¾—I forget at this moment the exact rate.

You have most frequently charged me two articles shipped up one & a quarter per cent., when one per cent. is the highest rate that I can hear of being charged. Your attention to these matters will much oblige me. I have set to work now in earnest to get out of debt,
86 and only ask a fair field and a good crop year. I will ship you 200 bales this season, averaging 450 lbs.—what we call here 225 bales. With corn & meat and mules, &c., to do me the year, I am determined to have the next crop clear of expenses.

Yours, respectfully,

JAMES H. BRANCH.

P. S.—Since writing the above, I am in receipt of yours of the 22d, giving a/c sales of 27 bales, & informing me of the safe arrival of 35 bales more. Please make out the enclosed account, as requested above. It is all Dutch to me, except the item of commissions.

O, No. 2.

RED FORK, *Nov. 15th*, 1855.

MESS. MACGREGOR, ALLOWAY & CO.,
*New Orleans:*

I am in receipt of yours, acknowledging the re' & sale of 25 bales cotton; & you ought to have been in receipt of 25 more some time since. (Let me hear from you on the subject, if you have or have
87 not rec' it.) I shipped some 27 more on yesterday, and will continue to ship as fast as I get it out. I hope you will do your best for a man as much in debt as I am. I made arrangements with Mr. Thomas Martin to cash a six thousand dollar draft, and put the money to my credit with you in December. If I should draw on you before that time, it will be on drafts falling due after he places the money with you.

Yours, &c.,

JAMES H. BRANCH.

O, No. 3.

RED FORK, *June 8th*, 1855.

MESS. N. E. ALLOWAY & CO.,
*Nashville:*

I regret very much that I did not see Mr. Bankhead when in this section, a short time since. Mr. Bolton and myself are having quite a lawsuit about the land I purchased from him. He sued me on the note that fell due in January last, at our April term of court, and got
88 judgment. I refused to pay because he did not tender me titles, and am now doubting whether I will give security and take it to the court of appeals, as my lawyer advises me to do, or rely on the mortgage you hold protecting me. Should I determine to do the latter, you ought to have some one to claim the benefits of the mortgage for you. You had better send the mortgage to Mr. Stewart, at Napoleon, with instructions to stop any levy on the property mortgaged. It will not be necessary for you to state the amount of my indebtedness. I wish to pursue that course, to delay Mr. Bolton as long as possible. As long as you hold the mortgage, he cannot make his money, except by suing on the notes as they fall due, and finally going into chancery, asking to have the land sold. This will take him two or three years. By the time he goes through this course of law, I hope to be able to pay him. If he does not tender me a full and clear title by next April court, I will sue him on his bond of twenty thousand dollars. I
89 understand he intends offering your house the amount of my indebtedness, and demanding the mortgage. If he does so, you will of course give him no information in any way, either as to my indebtedness or my intentions towards him. He served me a bad trick. It is now my time to pay him back, if I can. Should he get possession of the mortgage, you will readily see that he would break me up.

We have a report here that your house has failed. I do not know that we have been correctly informed. Should such a misfortune over-

take you, I should regret it very much, on your own account as well as on my own, but hope that you will not let the mortgage pass out of your own hands, that I may make favorable negociations with the holders of my paper. Should this mortgage pass, in that emergency, into hands that would not give me time, the result would most disastrous to me and of no benefit to you.

I would like very much to visit Nashville this summer, but have no resources for money. Can't you let me have enough to pay
90 my expenses during the summer in your section, or make the negociations for me after I come up. I am really suffering for corn, and fear my crop will be materially shortened by not getting it in time, if at all. Mr. McGregor wrote me that he would send me corn some time since, but I can neither hear of the corn or hear from him. My crop is the best in Desha, but not as good as I would like to have it, by a good deal. I hope for as much as I made last year, and far better prices. Please let me hear from you at as early a day as convenient, on the subject of this letter.

Yours, &c.,

JAMES H. BRANCH.

O. No. 4.

RED FORK, *March 20th*, 1856.

MESS. N. E. ALLOWAY & CO.:

Enclosed I send you a letter from Col. Yell, Mr. Bolten's lawyer, in relation to my last note to Bolten, and Mr. Cummings' reply on its contents; also, a subpœna to attend court in Napoleon, the third
91 Monday in April, to answer a bill in chancery, the purport of which is, that I have failed to comply with my contract, and asking that the trade be cancelled and Bolten again put in possession of the land. You will see Mr. Cummings' (my lawyer) criticism on Col. Yell's letter to me, and his reference to the same subject in his other letter, in which he says I must tender the money and ask the court to force Bolten to make me a title.

You will see from Mr. Cummings' last letter that the note before sued out taken up to the court of appeals has been decided against me, and execution can now issue on it. This note I expected to have to pay, and arranged for it with you last summer. My intentions is to file a bill and stop its collection, if I can, until the whole matter is adjusted, on the ground that Bolten has no title to the land, and cannot make one.

This is the position alluded to by Mr. Cummings in his last,
92 informing me that it had been decided against me. I have no idea that I will have either note to pay for some time to come. But in order to sustain myself, and my case, and retain my trade with Bolten, I must have the gold and silver at court the 3d Monday in April 21st, and make the tender alluded to, and demand a title; failure to do so, & Bolten will get my land from me for a mere song.

The sheriff has promised me to let me have the gold & silver to make the tender on my depositing accepted drafts—to be taken back again if Bolten fails to make title, which he says he knows he cannot do until he buys out and compromises other claims. He has refused to pay his notes for the land on the ground that the title was not good. It matters not with me; I have his bond for twenty thousand dol. to make me title on payment of the last note. He may find himself having to pay this snug little sum before he is aware of it.

93 The two notes were for $3,666.66 each, one due 1st Jan'y, 1855, with 6 per cent., int. up to 21st April, 1856, and the other due 1st Jan'y, 1856, with interest at 6 per cent. up April 21st, 1856. They did not bear interest until due. The money deposited with you I have not drawn for entirely. There is enough of it left to pay one of the notes, and give me credit for all of my cotton-crop, about 220 average bales. Now I want you to give me credit for such a balance as there may be of it, and send me a separate sight-draft to cover each note above alluded to, payable to my order, and accepted by you. If I use them I will provide for the drafts Mr. Martin has before it is due.

Mr. Watkins has promised to help me in both money and negroes during the year; in fact, he said he would send me a part of this crop when it was sold. I do not like to call on him. You must take my word that I will provide for the Martin draft, if I use yours, and send them
94 to me as quick as you can. I am far from feeling comfortable, & will count the days until I hear from you. I can't leave home, being without an overseer, and will rely on your doing as I ask. Should you fail to do so, I will not have time, before court, to accomplish anything elsewhere, and all will be up to me. Should I use the drafts, which is hardly possible, and not at all probable, my providing for the Martin draft will still lessen my indebtedness to you.

Very respectfully, yours,

JAMES H. BRANCH.

P. S.—In a few words, my idea is this: send me sight-drafts on N. Orleans, accepted on face, that I may make a tender to Bolten. After I have done this, he being unable to make me title, I will file a cross-bill against him, asking for an injunction against all his proceedings, until he can, under the decision of the court, make me title. This will give me all advantage and keep him out of his money for a year or
95 two longer.

You see I must be able to make him tender of money. All depends of that. If the drafts are not used, they will be returned to you. I must have these drafts in hand by the 21st April.

O, No. 5.

RED FORK, *March* 24, 1856.

Mess. N. E. ALLOWAY & Co.:

I forwarded you, by Mr. Thomas Martin, a few days since, the correspondence between my lawyer in the Bolten case and myself. But for fear of accident I write by mail. You will see, from these letters and my own accompanying them, the situation of my business with Bolten; also, that it has became necessary for me to make Bolten a tender of the purchase-money at the April term of the court, 21st of the month. The idea conveyed was that I had to make Bolten a tender in gold and silver.

To do so, I requested you to send me at once sight-drafts on N.
96 Orleans accepted on face to cover the two notes he holds, one for $3,666.66, and due 1st Jan'y, 1855, with interest at 6 per cent. up to 21st April, 1856; one for $3,666.66, due 1st Jan'y 1856, with 6 per cent. int. up to 21st April, 1856, and to credit me with the money I got from Martin, and I would meet Mr. Martin's draft myself if I used them. Bolten will not be able to make me title immediately. I doubt if he can do so for several years. If the court appoints a receiver, I will have the money deposited by order of the court with your house in N. O.

Bolten has sued for the land, alleging that I have failed to compel with my contract, and I must tender the money, through the court, to

him, alleging his inability to make title, and asking the court to compel him to do so, or pay me the amount of the bond I hold, his $20,000. The tender I must make or his plea will be a good one. I hope you
97 have received my other communication, and I shall soon hear from you.

Martin and Branch by this mail address you in reference to their business.

I will get you Col. R. W. Williams before I am done.

Yours, &c.,

JAMES H. BRANCH.

O, No. 6.

RED FORK, *Nov.* 24, '55.

MESS. MACGREGOR, ALLOWAY & CO.,
*New Orleans:*

Since my last, I am in receipt of your, enclosing sale of twenty-five bales cotton at 7½c. This seems to me low. There could not have been so much difference between this & the previous lot, which you wrote me had been well handled, though you only allowed me a little over 8 cents for it. Now I do not grumble, but you must permit me to call your attention to the fact that all that can be said against my cotton is that it is sometimes trashy. It is better handled in the gin-house
98 than the same class cotton generally. I made you a further shipment of twenty-seven bales a few days since, of which I advised you, and will ship about as much next week on the first boat, and about as much every two weeks until my crop is all in market. I hope you will do your best for me as you know I *kneed* it.

I have just enclosed a draft to Mess. Archer & Pappsy, at thirty days date, for eleven hundred and ninety-six dol., to cover the one your house protested in Oct., drawn in favor of those gentlemen. They are att'y' at law, and hold an execution against me for this sum, and if not paid, my property will be levied on and sold in Florida. I hope the money Mr. Martin promised to place to my credit in Dec., will be on hand before it falls due, but should it not by any accident, I hope you will let it make no difference. I shall wish to draw for a few hun-
99 dred dol. between this and Chirstmas. Will you protect it, relying upon Mr. Martin's promise, who I believe is a reliable man in such matters? I left the drafts with your house all fixed up as he wished them for him to cash. I shall make as much cotton as I did last year, and plenty corn and meat.

Yours, &c.,

JAMES H. BRANCH.

P. S.—Please send me 12 sacks salt on a through boat if you can; two (2) weeks from the time you get this will do if no boat offers before.

O, No. 7.

RED FORK, *Jan'y* 27, 1857.

MESS. MACGREGOR, ALLOWAY & CO.,
*N. Orleans:*

I have had fifty odd bales cotton on the river bank, awaiting shipment, for a week or ten days. I am expecting daily a boat to take it. Owing to my gin-stand giving out, I have been delayed in getting
100 my crop ready for market; but for the mishap, I would have had one hundred and seventy-five bales in market by Christmas.

I have picked but little since that time; the weather has been improvidently bad, either raining, sleeting, or freezing. We had a tremendous rain last night. In spite of the bad weather and heavy loss from storm &c., (say at the lowest calculation fifty bales,) I hope yet to make out two hundred and seventy-five 400 lb. bales, which I hope will realize me $12,000, leaving a balance that your house can no longer think onerous or burdensome, with an increase of seventy-five acres in cotton next year. I have drawn on your house in N. O. for about five hundred dol. in small bills, all of which I presume have come to hand, and hope you have accepted. I shall draw on you at six months in a few days for about fifteen hundred more, ($1,500.) I shall not want anything more than to pay current expenses for the year, unless
101 I should make a trade for a piece of land adjoining me, amounting to a few thousand dol's; the exact amount I cannot tell, not yet knowing how much land I will have to buy to get the piece I want. In this case I might wish an accommodation on time paper of a thousand or two more. I am in receipt of a letter from your house in Nashville, in which I think they do not give me credit for reducing my balance so much this season, and do not take into consideration the increase quantity of cotton I will have in this year. When they rather complain, I requested them to forward you my reply to it, as I wished to be fully understood by all parties. They complain that I promised to provide for the Martin draft of $6,000 and did not do so. In reply, I say I have provided for it even in a better shape than negotiating my draft for it, by sending the cotton to meet it. They further enclose me two drafts for $3,000 each, to sign. I left with them $9,000 of
102 drafts, which, being added to my crop of $12,000, makes $21,000. My balance last summer was about $22,500, say now it is $23 or $24,000; deduct $12,000 crop, it leaves $12,000 balance, which would leave a deficiency of $3,000, and not $6,000. I have accordingly sent the draft for $3,000. This calculation includes the amount I have drawn for and wish to draw for at 6 mo. I have drawn on Nashville for nothing since I was up there in the summer, and I go' my account. If every thing should prosper with me next season as it has this, in croping, prices, &c., I hope to wipe out my old balance and commence anew.

The man who attempts to settle a new place in the river-bottom will get off well if he does as well as I have done. That season I had in 220 acres in cotton. This season I will have in 300, all of which ought to make me a full crop.

103 Please send me by the first opportunity a first-rate four-horse wagon, (without bed or body as they may term it,) simply the necessary running-gear, three (3) inch tire, wooden axels, and a horse-cart, such I believe as they use on railroads. Light, strong, and cheap, with saddle, &c.; they usually cost about $30 or $35. Send also 2 doz. small size cans Baltimore oysters. If they cost from 50 or 60 a case, send but one doz., say $10 worth; (10) ten gallons of the best whisky that can be had; ½ doz. bottles best quinine.

O, No. 8.

NEW ORLEANS, *May* 30, 1857.

JAMES H. BRANCH, Esq.,
*Red Fork, Desha Co., Ark's.*

DEAR SIR: Our last was on the 11th inst., enclosing am't sales of 47 bales of cotton, and we now take leave to hand you statement of your

account with us to 28 inst., showing cash balance due us on that
104 day, $5,144.62; ac'pted sundry drafts on us maturing in Mont., Dec'm., '57, and Feb'y and March, '58, $12,540.00; which we hope will, on examination, be found correct. We also enclose, for your signature, a dr'fts on ourselves at 10 p. c., to nett the cash balense as above at 9 % discount, (that being the rate charged by the bank in Nashville,) as per memo. at foot.

Please sign the dr'fts where we have put your name in pencil, & return same to us so that we can use it, and thus give time for your crop to come to hand. The cotton-market has shown very little animation during the past week, the sales only 11,800 bales, without changing price. We annex price-current and remain,

Your' respectfully,

McGREGOR, ALLOWAY & CO.

| | | |
|---|---|---|
| Cash balance due M., A. Co., as per rend. 28th May.... | | $5,144 62 |
| Dr'fts on M., A. Co., Oc. 10, net, due 31 March, 1858..... | $5,572 32 | |
| Less disc't, 9 %, 30 days..... | $427 70 | |
| | | $5,144 62 |

105 One gallon Myooh orits., equivalent in gum ½ doz. sticks liquorize.

Yours, &c.,

JAMES H. BRANCH.

P. S.—Send four hundred (400) yds. bagging & rope to pack it. Gunny, if any cheaper than K'ty.

O, No. 9.

COURTLAND, ALA., *June 29th.*

Mess. N. E. ALLOWAY & Co.:

I have just sent my draft to your house on N. Orleans, to cover my balance. I have some fears that my crop will not be a full one, owing to a bad stand. The deficiency, however, will be made up, I hope, in price. I wish to spend a couple of months at Beaver Dam, with my family. Do you feel disposed to furnish the funds.

The cotton crop here is a month behind, looks badly, and is generally a bad stand. Half crop is a liberal allowance. Corn, wheat, oats, very fine.

106 Yours, respectfully,

JAMES H. BRANCH.

O, No. 10.

COURTLAND, *June 28th*, 1857.

Mess. MACGREGOR, ALLOWAY & Co.,
*New Orleans:*

Yours enclosing account-current and bill to sign, has just reached me at this point. I sign the bill as requested. Before leaving Arkansas I drew two bills of $200 each on you, to defray some expenses. I hope you will accept and pay them. Please send to my plantation a light four-horse wagon, either iron or wooden axels, 3-inch tire, and as cheap a one as you can get, to be strong and durable. Send, also, one barrel of molasses for my negroes. The crop in this section is a month behind.

It is impossible, under the most favorable circumstances, to make more than half a cotton crop—many places not so much—whilst some had to plow up and put in corn. I have not heard from my own crop
107 lately, but my stand is imperfect, and I fear a short crop for the land I have in.

Yours, &c.,

JAMES H. BRANCH.

O, No. 11.

RED FORK, DESHA CO., ARK'S, *May* 28, 1857.

No. 9690. $5,572.32.]

Ten months after date, of this first of exchange, second unpaid, pay to the order of N. E. Alloway & Co., fifty-five hundred and seventy-two $\frac{32}{100}$ doll's, value received, which place to account of your ob't serv't.

JAMES H. BRANCH.

To MACGREGOR, ALLOWAY & CO.,
*New Orleans.*

(The following endorsement:)

N. E. ALLOWAY & CO.:
Pay A. H. Premise Co's, or order.

J. SORREY, *C.*

O, No. 13.

RED FORK, *March 12th*, 1854.

Mr. BANKHEAD:

D. SIR: Your favor of the 7th came to hand to-day, and am
108 much obliged for your kind attention. My cotton would have been ship'ed p'r the Ray after you left, but I learned that that had been carried down by her was laying out on the bank of the river exposed.

The Arkansas is now in fine boatable order, and I doubt not will soon furnish us with boats to take it directly to N. Orleans. We are progressing very well in the preparation for another crop. I hope to increase my shipment to you next fall, to at least 250 bales—this being the number of acres I shall have planted—in far better condition than last season. This is my lowest mark. You know I plant good land, rich enough, probably, to pay me for my trouble and vexation.

I *find*, when I got to Vicksburg, that I could not effect my trade with Mr. Bolten, except with the legal tender of gold; consequently, had to draw at sight on your house, which I much regretted, giving
109 them afterwards a larger draft to meet it with on market. I received your second letter after my return home. The balance of the $5,000 I wanted I have not drawn for, though much in need of it. After my cotton goes forward, I hope it will give you no trouble to accept long drafts for a few hundred only. I shall need 500 bushels corn, and wish to settle a few small debts around me. I will willingly pay you the 2½ per cent. on the balance against me, after the sale of my cotton.

My expenses were very heavy last seasen, but this crop must be clear. I am determined to get out of debt. I hope never to be placed a second

time in an embarrassing position; it does not suit my temperament. I regretted very much not seeing you as you passed down. In passing I hope you will always call and consider anything I have at your command.

Please send me one cask (as heavy as you can get it, it being
110 better meat) of good sides, and one barrel of tar by the first opportunity.

Yours truly,

JAMES H. BRANCH.

O, No. 14.

RED FORK, ARK'S, *2d July*, 1858.

$2,000.00.]

Five months after date, pay to the order of Mess. N. E. Alloway & Co., two thousand dollars, value received, and charge same to account.

Y's resp'f'ly,

JAMES H. BRANCH.

Mess. MACGREGOR, ALLOWAY & CO.,
*New Orleans.*

Accepted:

MACGREGOR, ALLOWAY & CO.

(The following endorsement:)

Pay Eugene Rousser cash or order.

N. E. ALLOWAY & CO.

O, No. 15.

RED FORK, ARK'S, 12 *Feb'y*, 1858.

$3,000.00.]

Ten months after date, pay to the order of N. E. Alloway & Co. three thousand dollars, value received, and charge the same to account of—

JAMES H. BRANCH.

To MACGREGOR, ALLOWAY & CO.,
111 *New Orleans.*

Accepted:

MACGREGOR, ALLOWAY & CO.

(The following endorsement:)

N. E. Alloway & Co., P'r D. HARRIS.
Pay MacGregor & Bankhead.

JAMES BANKHEAD.

O, No. 16.

RED FORK, ARK'S, 12 *Feb'y*, 1858.

$3,000.00.]

Eleven months after date, pay to the order of N. E. Alloway & Co. three thousand dollars, value received, and charge the same to account of—

JAMES H. BRANCH.

To MACGREGOR, ALLOWAY & CO.,
*New Orleans.*

O, No. 17.

RED FORK, ARK., 12 *Feb'y*, 1858.

$3,000.00.]

Twelve months after date, pay to the order of N. E. Alloway & Co., three thousand dollars, value received, and charge the same to account of—

JAMES H. BRANCH.

To MACGREGOR, ALLOWAY & CO.,
*New Orleans.*

112 N. E. ALLOWAY & CO. W. W. BURRY.

Pay A. W. Davis & Co., overseer.

D. WEAVER. "C."

O, No. 18.

RED FORK, ARK., 12*th Feb'y*, 1858.

$3,000.00.]

Thirteen months after date, pay to the order of N. E. Alloway & Co., three thousand dollars, value received, and charge the same to account of—

JAMES H. BRANCH.

To MACGREGOR, ALLOWAY & CO.,
*New Orleans.*

N. E. ALLOWAY.
PLACINE FORSTALK, *Pres't.*

O, No. 22.

BELLVILLE, *Dec.* 16*th*, 1855.

Mess. ALLOWAY & CO., *Nashville:*

The difficulty I was in about the place I am on, has been settled by my purchasing it from Mr. Bolton at a high price and heavy cash payment. My indebtedness to you will amount to more than my crop,
113 I fear, by something considerable. You can best aim at the amount by crediting me with two hundred bales; the ballance I will give you a new draft for so soon as my crop is sold. I shall be compelled to have an additional sum of some five thousand dollars to secure the trade with Mr. Bolton, by the middle of Jan'r. Mr. Bankhead understands the position I am in. An accommodation of the amount will oblige,

Your ob't ser't,

JAMES H. BRANCH.

My crops next season must be larger than this.

No. O 23.

COURTLAND, *Oct.* 16*th*, 1856.

Mess. N. E. ALLOWAY: I leave to-morrow for Arkansas with some negroes, and will return in a few weeks to this place where I have my
114 family. I am just in receipt of a letter from Mr. Scott, of the Exchange Bank, acknowledging the r'c'pt of my communication, and saying that the matter would be laid before the board at its first meeting,

when he would communicate more fully, he hoped with a satisfactory reply. Mr. Thomas Martains replyes to me that the Planters' Bank is the holder of my draft; that he cannot say now positively that he can accom-'odate me, but that he will do so if has the money at the time. You will please mention the matte' to him for me in time.

I have some negotiations going on hear for 10 or 15 thousand dol'ars whitch I think will turn out as I wish. I will know when I come up again. I have an confidential friend backing me. I have from several sourses that my crop is given up to be the best on the Ark's River.

If my funds should give out before I get home, whitch I think
115 likely, as I have so mutch to buy in Memphis, I will draw on you for one hundred dollars, or something near that sum.

I owe Sam Pickett the enclosed bill whitch ought to have been paid before. Will you please call at once and settle it for me?

Yours,

JAMES H. BRANCH.

O, No. 24.

COURTLAND, ALA., *Dec.* 1856.

N. E. ALLOWAY & Co., *Nashville:*

I leave to-night for Arkansas, and address you that I may know what to with my business matters. At the 1st Jan'y you will receive about 300 bales, the amount of this crop. I have encreased my force; hereafter will probably never fall under it: my force now being about thirty hands. I will want, at the 1st of Jan'y, about five thousand dol.; no more for the year that I can now foresee. Will you accept for
116 this amount? Please let me hear from you at once. I write in haste.

Yours,

JAMES H. BRANCH.

O, No. 25.

NATALEON, *M'ch 3rd*, 1860.

Messrs. MCGREGOR, ALLOWAY & Co.:

I enclosed you by last mail a bill for $2,000, requesting you to sell the same on the best terms you could, and place the amount to my credit, to meet certain drafts whitch I will be compelled to draw on account of to the purposes. I have bin ingaged in building; had to abandon. I came to this place to-day, and have drawn on you at ten days sight in favor of A. Cohen, for $265; one in favor of Rodger, Smith & Co., for $200 at sight; in favor of David Tilghman, for $200 at ten days sight, making in all 665. If it is the last act of your life, you must pay them, and interest that it may cost I will pay. Mr. Al'oway told me to send a bill to Nashville for what I wanted, but I
117 cannot use bills on that place, and the *sessesity* is *two ergent* for delay; this sum that I have drawn for is to pay Irishmen: they must be payed or a big fuss—my character lost.

Respectfully,

JAMES H. BRANCH.

P. S.—I draw on you for my taxes whitch you of course must pay.

118

(Copy.)

## EXHIBIT O, N°. 12 TO ANSWER.

*J. H. Branch, esq., in account with MacGregor, Alloway & Co.*

| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| 1856. | | | | 1856. | | | | |
| June | 2 | To ac'ept y'r d'ft 27 Nov'r, '55, 12 m. d., favor N. E. Alloway & Co. | | Nov. 29 '57 | 180 | 120 | | 3,000 |
| " | " | " ac'ept y'r d'ft 16 Jan'y, '56, 12 m. d., favor N. E. Alloway & Co. | | Jan'y 19 | 129 | 86 | | 3,000 |
| " | " | " ac'ept y'r d'ft 17 M'ch, '56, 12 m. d., favor N. E. Alloway & Co. | | May 20 | 69 | 46 | | 3,000 |
| " | " | " ac'ept y'r d'ft 15 April, '56, 9 m. d., favor N. E. Alloway & Co. | | Jan'y 17 '56 | 131 | 116 44 | | 4,000 |
| " | 3 | " cash p'd y'r check, 22 April, '56, in favor E. Cumings.. | | June 3 | 359 | 27 92 | | 200 |
| | | " " " " 20 May, " " " W. M. Carder. | | " 3 | | 27 92 | | 150 |
| July | 30 | " " invoice sundries | | July 30 | 302 | 27 58 | | 410 99 |
| Aug. | 12 | " " up freight st. H. M. Wright | | Aug. 12 | 289 | 61 03 | | 15 50 |
| Oct. | 2 | " accept y'r d'ft, 2 June, 9 m. d., favor N. E. Alloway & Co. | | Mar. 5 | 84 | 60 86 | | 3,260 68 |
| " | 8 | " accept y'r d'ft, 10 Dec., 12 m. d. " Ja's Branch | | Dec. 13 | 166 | 221 33 | | 6,000 00 |
| Nov. | 3 | " cash p'd y'r c'k 1 Nov., favor Hicks, Terry, & Anderson. | | Nov. 3 '57 | 206 | 2 01 | | 43 95 |
| '57. | | | | | | | | |
| Feb'y | 7 | " cash p'd by N. E. Alloway & Co. to Sam. Prickett | | Jan'y 6 | 142 | 4 83 | | 153 25 |
| " | 9 | " " " y'r c'k, 30 Jan'y, favor W. M. Carder | | Feb'y 9 | 108 | 2 97 | | 124 38 |
| | | " accept y'r d'ft, 1 " 90 % d., favor J. Rawlings. | | April 4 | 54 | 1 20 | | 160 00 |
| | | " " " " 30 " 6 m. d.. " W. M. Carder. | | Aug. 1 | 65 | 22 74 | | 1,575 36 |
| " | 10 | " cash p'd invoice sundries | | Feb'y 10 | 107 | 4 30 | | 180 92 |
| " | 11 | " " " y'r d'ft, 1 Nov., 3 m. d., favor J. N. Hursley. | | " " | ..... | 3 54 | | 150 00 |
| " | 17 | " " " " " 16 " 90 % " Walker & Gywnn. | | " 17 | ..... | 5 55 | | 250 00 |
| April | 8 | " cash p'd y'r d'ft 1 M'ch 10, o. d., favor J. S. Clark | | April 7 | ..... | 1 13 | | 100 00 |
| " | 22 | " " " " c'k 14 April, favor E. W. Mumford | | " 22 | ..... | 1 60 | | 200 00 |
| " | 30 | " " " " " 12 " " W. M. Carder | | " 30 | ..... | 87 | | 140 87 |
| May | 28 | " " " " 18 May, " self | | May 28 | ..... | " " | | 100 00 |
| | | " commission, advancing, & accepting. $4,752.61 | | ..... | ..... | ..... | | 237 63 |
| | | " balance interest act | | ..... | ..... | ..... | | 154 38 |
| | | | | | | 735 16 | | $26,547 91 |

| | | | | | | |
|---|---|---|---|---|---|---|
| 1856. | | | | | | |
| Nov. | 8 | By net proceeds 6 bales cotton | 201 | $76 87 | | 295 05 |
| " | " | " " " 34 " " | 201 | | | 1,426 23 |
| Dec. | 2 | " " " 24 " " | 177 | 42 | | 1,067 71 |
| Dec. | 6 | " am't from N. E Alloway & Co | 173 | 208 67 | | 5,428 22 |
| '57. | | | | | | |
| Jan'y | 5 | " Net proceeds 27 b. cotton | 143 | 41 50 | | 1,305 82 |
| " | 28 | " " " 27 " " | 120 | 38 01 | | 1,424 72 |
| Feb'y | 16 | " N. E. Alloway & Co., c'k on us y'r favor 16 Feb'y st. | 101 | 60 67 | | 2,702 97 |
| M'ch | 12 | " " " " " " " M'ch 12 | 77 | 46 22 | | 2,700 74 |
| " | 26 | " net proceeds 49 b. cotton | 63 | 34 26 | | 2,447 45 |
| May | 11 | " " 47 " " | 17 | 9 84 | | 2,604 38 |
| " | 28 | " interest in red ink, as p. contra | ..... | 22 74 | | ..... |
| " | " | " balance carried down | ..... | 154 38 | | 5,144 62 |
| | | | | 735 16 | | $26,547 91 |

| | | | | | |
|---|---|---|---|---|---|
| 1857. | | | | | |
| May | 28 | To balance due MacGregor, Alloway & Co., cash this day | ..... | | $5,144 62 |
| | | " ac'ept y'r d'ft, 2 Dec., '56, 11 m. d., favor N. E. Alloway & Co | $3,000 00 | | |
| | | " " " " " " 12 m. d., " " " " | 3,000 00 | | |
| | | " " " " " " 12 m. d., " George Oakley | 540 00 | | |
| | | " " " 9 Feb'y, '57 12 m. d., " N. E. Alloway & Co | 3,000 00 | | |
| | | " " " 4 M'ch " 12 m. d.. " " " " | 3,000 00 | | |
| | | | | | 12,540 00 |

E. & O. E.
NEW ORLEANS, 28th May, 1857.

N. B.—Int. allowed on d'ft 1,575.36 due 1 Aug., '57, say 65 day, $22.77.

119 EXHIBIT O, No. 12—continued.

*J. H. Branch, esq., in ac. with MacGregor, Alloway & Co.*

| | | | |
|---|---|---|---|
| 1857. May 28 | To balance per ac. rendered | | $5,144 62 |
| | CR. | | |
| 1857. July 7 | By your draft on us 28th May, 10 m. d., y'r favor | $5,572 32 | |
| | Less interest c. 9 % | 427 70 | |
| | | | 5,144 62 |

E. & O. E.
NEW ORLEANS, *July 7th*, 1857.

120 EXHIBIT O, No. 19.

*J. H. Branch, esq., in account current with McGregor, Alloway & Co.*

| | O, No. 19. | | | | |
|---|---|---|---|---|---|
| 1857. | | 1857. | | | |
| June 9 | To cash paid invoice sundries | June 9 | 347 | 34 78 | 451 06 |
| July 9 | " " " do. | July 9 | 317 | 9 79 | 139 30 |
| " 28 | " " " your c'k 29 June, for Roan & Bocage | " 28 | 298 | 13 24 | 200 00 |
| Aug. 19 | " " " d'f't 30 July " Walker & Gwynn | Aug. 19 | 276 | 2 45 | 40 00 |
| Sept. 5 | " " " invoice sundries | Sept. 5 | 259 | 16 46 | 286 30 |
| Oct. 7 | To cash paid our ac'pt' y'r d'f't of July 90 o. d. for W. B. Brown. | Oct. 7 | 227 | 10 09 | 200 00 |
| Nov. 4 | To cash paid our ac'pt' y'r d'f't of 2 Dec., 11 m. d., for N. E. Alloway. | Nov. 4 | 199 | 132 67 | 3,000 00 |
| Dec. 5 | To cash paid our ac'pt' y'r d'f't of 2 Dec., 11 m. d., for N. E. Alloway. | Dec. 5 | 168 | 112 00 | 3,000 00 |
| " 22 | To cash paid invoice sundries | " 22 | 151 | 3 59 | 106 68 |
| " 31 | " " " in. do. | " 31 | 142 | 63 | 20 16 |
| 1858. | | 1858. | | | |
| Jan'y 19 | " " " in. do. | Jan'y 19 | 123 | 84 | 31 17 |
| Feb'y 2 | To cash paid our acceptance y'r d'ft 30th Jan'y, '57, 12 m. d., favor G. Oakley. | Feb'y 2 | 109 | 13 08 | 540 00 |
| " 10 | To cash paid y r d'f't 7 Feb'y, 12 m. d., favor N. E. Alloway & Co. | " 10 | 101 | 25 69 | 1,144 87 |
| " 12 | To cash paid our accept' y'r draft 9 Feb'y, 12 m. d., N. E. Alloway & Co. | " 12 | 99 | 66 | 3,000 00 |
| M'ch 3 | To cash paid y'r check 26 Feb'y, st., G. E. Mayson | M'ch 3 | 80 | 1 74 | 97 95 |
| " 7 | " " " our accept' y'r d'ft 4 M'ch, 12 m. d, N. E. Alloway & Co. | " 7 | 76 | 50 67 | 3,000 00 |
| " 8 | To cash paid your o. k 3 M'ch, st. favor Rogers, Smith & Co. | " 8 | 75 | 3 33 | 200 00 |
| " 20 | To cash paid our ac'pt' y'r dr'ft 3 M'ch, 10 % favor D. Thilmon. | " 20 | 63 | 6 51 | 200 00 |
| " " | To cash paid our accept' y'r dr'ft 3 M'ch, 10 % favor N. Cohin. | " 20 | | | 265 00 |
| " 31 | To cash paid our accept' y'r dr'ft 28 May, '59, 10 m. d., favor N. E. Alloway & Co. | " 31 | 52 | 64 39 | 5,572 32 |
| April 5 | To cash paid our accept' y'r dr'ft 3 M'ch, 30 o. d. favor P. Boggins. | Ap'l 5 | 47 | 2 18 | 209 00 |
| " 24 | To cash paid N. E. Alloway & Co.'s account | " 24 | 28 | 5 00 | 802 71 |
| " 29 | " " " y'r check 12 Mar', st. favor A. Rudd | " 29 | 23 | 31 | 61 68 |
| May 15 | " " " " " 20 Ap'l, " " J. W. Rawlings | May 15 | 7 | 17 | 75 00 |
| | " " " " " 25 " " " R. S. Mixter | " " | | | 29 75 |
| " 22 | " balance interest | | | | 338 34 |
| | " commission accepting | | | | 240 42 |
| | " " advancing | | | | 240 42 |
| | | | | $575 61 | $23,491 93 |

| | | | | | |
|---|---|---|---|---|---|
| 1857. | | | | | |
| Oct. 31 | By net proceeds 21 bales cotton | 203 | 37 89 | | 840 10 |
| Dec. 20 | " " " 60 " " | 149 | 72 20 | | 2,180 74 |
| 1858. | | | | | |
| Jan'y 27 | " " " 39 " " | 115 | 31 59 | | 1,235 82 |
| Feb'y 17 | " am't from N. E. Alloway & Co | 94 | 54 60 | | 2,613 86 |
| March 10 | " net proceeds 32 bales cotton | 73 | 11 16 | | 687 66 |
| " 25 | " " " 5 " " | 58 | 2 46 | | 191 41 |
| " 31 | " " " 2 " " | 52 | 83 | | 72 49 |
| April 10 | " " " 3 " " | 42 | 62 | | 65 62 |
| May 1 | " am't from N. E. Alloway & Co | 21 | 25 92 | | 5,556 66 |
| | Bal | | 338 34 | | |
| | Balance carried down | | | | 10,047 57 |
| | | | $575 61 | | 23,491 93 |

| | | |
|---|---|---|
| 1858. | | |
| May 22 | To balance due MacGregor, Alloway & Co., cash this day | $10,047 57 |
| " " | " am't y'r d'ft 12 Dec., '57, 12 m. d., due 12 Dec., '58 | 3,000 00 |
| " " | " " " " 12 Jan'y, '58, " m. d., " 12 Jan'y, '59 | 3,000 00 |
| " " | " " " " 12 Feb'y, " " m. d., " 12 Feb'y, '59 | 3,000 00 |

E. & O. E.
NEW ORLEANS, *May 22d*, 1858.

121 O, No. 19.

| | | | | | |
|---|---|---|---|---|---|
| 1858. | | | | | |
| May 22 | To balance per ac. rendered May 22 | 119 | 265 71 | | 10,047 57 |
| Sept. 18 | " " interest account | | | | 220 14 |
| | | | | | $10,267 71 |
| | CR. | | | | |
| 1858. | | | | | |
| July 24 | By y'r d'ft on us 2d July, 5 m. d., favor N. E. Alloway & Co 2,000 | | | | |
| | Less interest p. & brokerage 92 50 | 56 | 23 74 | 1,907 50 | |
| Aug. 14 | By y'r dr'ft on us Feb'y 12th, 13 m. d., favor N. E. Alloway & Co 3,000 | | | | |
| | Less p'd int. & brokerage 194 16 | 35 | 21 83 | 2,805 84 | |
| | Bal | | 220 14 | | |
| | Balance carried down | | $265 71 | 5,554 37 | 10,267 71 |
| 1858. | | | | | |
| Sept. 18 | To balance due MacGregor, Alloway & Co | | | | $5,554 37 |
| | " acc'pt' your d'ft due 2d Dec, '58 | | | 2,000 00 | |
| | " " " " " 12 " " | | | 3,000 00 | |
| | " " " " " 12 Jan'y, '59 | | | 3,000 00 | |
| | " " " " " 12 Feb'y, '59 | | | 3,000 00 | |
| | " " " " " 12 M'ch, '59 | | | 3,000 00 | |
| | | | | | 14,000 00 |

E. & O. E.
NEW ORLEANS, *September 18th*, 1858. O, No. 19.

122 EXHIBIT O, No. 21.

*J. H. Branch, esq., in ac. with MacGregor & Bankhead.*

| | | | | | |
|---|---|---|---|---|---|
| 1858. | | | | | |
| Sept. 18 | To balance p'd ac. rendered | Sept. 18 | 175 | 215 93 | 5,554 37 |
| " " | To accept y'r dr'ft 2 July, 5 m. d., favor N. E. Alloway & Co. | Dec. 2 | 100 | 44 40 | 2,000 00 |
| " " | To accept y'r dr'ft 12 Feb'y, 10 m. d., favor N. E. Alloway & Co. | " 12 | 90 | 60 00 | 3,000 00 |
| Dec. 15 | To amount N. E. Alloway & Co.'s ac't to date | " 15 | 87 | 4 81 | 249 35 |
| " " | To accept y'r d'ft 12 Feb'y, 11 m. d., favor N. E. Alloway & Co. | '59. Jan'y 12 | 59 | 39 33 | 3,000 00 |
| " " | To accept y'r d'ft 12 Feb'y, 12 m. d., favor N. E. Alloway & Co. | Feb'y 12 | 28 | 18 67 | 3,000 00 |
| | To accept y'r d'ft 13 Feb'y, 12 m. d., favor N. E. Alloway & Co. | M'ch 12 | ..... | ..... | 3,000 00 |
| | | | | $383 14 | |
| 1859. | | | | | |
| M'ch 12 | To commission accepting $14,000 a 2½ % | | | | 350 00 |
| " " | " " advancing $14,000 a " " | | | | 350 00 |
| | " interest ac. to date | | | | 383 14 |
| 1859. | | | | | |
| M'ch 12 | To balance due MacGregor & Bankhead, cash this day | | | | $20,886 86 |

E & O. E.
NEW ORLEANS, *March 12th*, 1859.

123 And on October 1st, A. D. 1860, as follows:

JAMES H. BRANCH
*vs.*
McGREGOR, ALLOWAY & Co.

This day comes the said complainant by his solicitors, and files his motion for a decree, pro confesso, against the said defendant George McGregor, and also files his motion for time, until the 1st Monday in January next, to file exceptions to the answers of the said defendants James Bankhead and Nathaniel E. Alloway.

And on October 3d, A. D. 1860, as follows:

JAMES H. BRANCH
*vs.*
GEORGE McGREGOR, NATHAN E. ALLOWAY, and James Bankhead, partners under the name and style of McGregor, Alloway & Co.

This day comes said complainant, by his solicitor, and his motion for a decree, pro confesso, against the said defendant George McGregor, is now taken up and submitted to the court; and thereupon it appearing to the court that, at the regular term of this court, in April, 1860, the said defendants, by their solicitor, M. L. Bell, esq., appeared in open court here and entered their appearance herein, and waived service of the writ of injunction in this behalf, and time was granted them until the first Monday in September, then next following, to file their answer; and that said defendant George McGregor, has wholly failed to plead, answer, except, or demur, to the bill of complaint exhibited against him in this behalf, on, or before, or since said first Monday of September, as he should have done: It is therefore ordered, adjudged, and decreed by the court, that the bill of complaint in this behalf, and the matters and things therein contained, be taken and con-

124

sidered as confessed, as against the said defendant George McGregor.

Whereupon the court takes up and considers the motion herein filed by said complainant, for an extension of time until the first Mon-
125 day in January, 1861, to file exceptions to the answers filed herein by the defendants Bankhead and Alloway; and it appearing that the showing made by said motion, and the affidavit thereto attached is sufficient, it is therefore ordered, adjudged, and decreed that said motion be sustained, and that said complainant have, until the said first Monday in January next, (1861,) to prepare and file his said exceptions to the answers of the said defendants, Bankhead and Alloway.

126 UNITED STATES OF AMERICA,
*Eastern District of Arkansas:*

Be it remembered that, at a circuit court of the United States of America in and for the eastern district of Arkansas, begun and holden on Monday, the 8th day of April, anno Domini one thousand eight hundred and seventy-one, at the United States court-room in the city of Little Rock, Arkansas, the honorable Daniel Ringo, district judge, presiding and holding said court, the following proceedings were had, to wit:

And on April 18th, A. D. 1861, as follows:

JAMES H. BRANCH
*vs.*
McGREGOR, ALLOWAY & Co.

This day come the parties aforesaid, by their respective solicitors, and the said defendants suggest and prove to the satisfaction of the court, that the said defendant George McGregor, departed this life some time in the month of August, A. D. 1860. It is therefore ordered that the decree, pro confesso, rendered herein against the said defendant, on the 3d day of October, 1860, be, and the same is hereby, set aside; and it is further ordered that this cause do progress to final hearing and
127 determination against the said defendants Nathaniel E. Alloway and James Bankhead; whereupon the exceptions of the said complainant to said defendants' answers coming on to be heard, are argued by counsel, and submitted to the court and taken under advisement; and, on motion of said complainant, leave is granted him to make the legal representatives of said George McGregor, deceased, parties defendant to this suit, if he shall be advised so to do, and the same shall not delay the final adjudication of this case.

And on April 19th, A. D. 1861, as follows:

JAMES H. BRANCH
*vs.*
McGREGOR, ALLOWAY & Co.

Come the said parties, by their respective solicitors, and the court being now well and sufficiently advised of the matters of law arising on said complainant's exceptions to said defendants' answers, doth sustain all of said exceptions, except the 18th and a part of the 23d ex-
128 ception, which are overruled; and that part of the 23d exception which is sustained, commences on the 7th line from bottom of

page 39, and ends in the 3d line from the top of page 40 of said defendants' answer, and is in the words following, to wit: "And says 'you have no written contract to prove that I did these things, therefore I will not pay what I honestly owe you. By a show of honesty and many promises, I have got your money without putting my contract in writing, and now I will take advantage of your confidence and refuse to pay you.' But justice will prevail. In an unguarded moment he has committed to writing his contract, and now defendants ask the full benefit of that contract."

Whereupon the said plaintiff enters his replication to said defendants, answers in short, by consent upon the record, and, by consent of parties, the time for taking depositions in this cause is enlarged until
129 the first day of the next term of this court, and, by consent of parties, it is ordered that both parties have leave to take depositions to be read in evidence on the trial of this cause; and this cause stands continued until the next term of this court.

Before the clerk in vacation, July 28, 1866:

J. H. BRANCH
*vs.*
McGREGOR, ALLOWAY & Co.

This day comes into the clerk's office the said defendants, by Sol. F. Clark, esq., their solicitor, and on his motion it is ordered that the clerk redocket the above-entitled cause.

130 UNITED STATES OF AMERICA,
*Eastern District of Arkansas:*

Be it remembered that, at a circuit court of the United States of America in and for the eastern district of Arkansas, begun and holden on Monday, the 8th day of April, anno Domini, one thousand eight hundred and sixty-seven, at the United States court-room in the city of Little Rock, Arkansas, the honorable Henry C. Caldwell, district judge, presiding and holding said court, the following proceedings were had, to-wit:

JAMES H. BRANCH
*vs.*
McGREGOR, ALLOWAY & Co.

And now come Garland & Nash, solicitors for complainant, and suggest the death of James H. Branch, and on their motion leave is granted to substitute the name of complainant' administrator.

131 UNITED STATES OF AMERICA,
*Eastern District of Arkansas:*

Be it remembered that, at a circuit court of the United States of America in and for the eastern district of Arkansas, begun and holden on Monday, the 11 day of October, anno Domini, one thousand eight hundred and sixty-nine, at the United States court-room in the city of Little Rock, Arkansas, the honorable Henry C. Caldwell, district judge, presiding and holding said court, the following proceedings were had, to-wit:

And on October 19th, A. D. 1869, as follows:

JAMES H. BRANCH
*vs.*
McGREGOR, ALLOWAY & CO.

And now, by consent of parties, it is ordered that this cause be continued.

132 UNITED STATES OF AMERICA,
*Eastern District of Arkansas:*

Be it remembered that, at a circuit court of the United States of America in and for the eastern district of Arkansas, begun and holden on Monday, the 11 day of April, anno Domini one thousand eight hundred and seventy, at the United States court-room in the city of Little Rock, Arkansas, the honorable Henry C. Caldwell district judge, presiding and holding said court, the following proceedings were had, to wit:

And on April 14, 1870, as follows:

JAMES H. BRANCH
*vs.*
McGREGOR, ALLOWAY & CO.

Comes the plaintiff, by Clark & Williams, and come the defendants, by L. A. Pindall, and, by consent of parties, this cause is continued.

And on June 7th, A. D. 1870, as follows:

JAMES H. BRANCH
*vs.*
N. E. ALLOWAY AND JAMES BANKHEAD.

AND

JAMES BANKHEAD
133 *vs.*
JAMES H. BRANCH.

Comes the said complainant in the cross-bill, James Bankhead, by his solicitors, and, it appearing that this cause has been heretofore revived in the name of Hector McNeil, as administrator of the estate of James H. Branch, deceased, it is ordered, on his motion, that the original and cross causes proceed in the name of said administrator, and that the case be set for hearing at the next term upon original and cross bills, exhibits, and answers, and replications thereto, and proofs to be then had; to which said term this cause is continued.

And on July 27th, A. D. 1870, as follows:

HECTOR McNEIL, ADM. OF JAMES H. BRANCH, dec'd,
*vs.*
ALLOWAY & BANKHEAD.

AND

JAMES BANKHEAD
*vs.*
HECTOR McNEIL, ADM., ET AL.

134 And now comes into the clerk's office, James Bankhead, complainant, on cross-bill, by Clark & Williams, his solicitors, and files herein his amended and supplemental cross-bill, and, on motion of said solicitors, it is ordered that a writ of subpoena issue herein to Hector McNeil, adm., Seth W. Bolton, and D. A. Williams, returnable on the 5th day of September next, and it is accordingly done.

Which amended and supplemental cross-bill is as follows:

135 UNITED STATES OF AMERICA,
*Eastern District of Arkansas:*

To the hon'l the judges of the United States circuit court in and for the eastern district of Arkansas, in chancery sitting:

Your orator, James Bankhead, a citizen of the State of New York—a defendant in the original bill filed in this court by James H. Branch, now pending in the name of Hector McNeil, administrator of his estate, against Alloway & Bankhead, partners of the firm McGregor, Alloway & Co., and complainant in the cross-bill now pending in the same cause—brings this his amended supplemental bill to said cross-bill, and represents: That in the year 1859, the said firm of McGregor, Alloway & Co. brought suit on the law side of your honor's court, against said Branch, for an indebtedness therein described of about $20,000; that said Branch thereupon filed the bill above-mentioned, praying an injunction against the further prosecution of said suit, because of certain alleged equities, but confessing an indebtedness to them of about $8,000.00, stating that he had executed a mortgage to secure to them the payments of whatever sum he might own, said mortgage being
136 upon certain real and personal estate therein described, which mortgage was made a part of his bill, and offering that it might be foreclosed and property sold to pay whatever sum might be found due them; and praying that they be required to submit to the adjudication of the cause in this court and none other.

That bond, with Joseph Branch as security, was given and approved, and a temporary injunction granted by the court; that your orator promptly filed his bill, exhibiting his proofs, claiming that the whole amount charged for advances, interest at eight per cent., and two and a half per cent. for accepting, was legally due him; in fact, everything as claimed in said account, except that the two and a half per cent. for advances was referred to the court with prayer for leave to amend as therein stated if that was overruled; that he made his answer a cross-bill and prayed for a decree of such amount as might be equitably due and asked that said mortgage be foreclosed and said property
137 sold in satisfaction thereof.

That the death of said McGregor has been suggested and admitted, and the answer of Alloway, the remaining member of said firm filed, wherein he disclaims interest in said cause and alleges that the same is due your orator.

Your orator states that Joseph Branch, the security in said injunction bond, has died; that his estate is insolvent and his legal representatives are all non-residents of the State of Arkansas, and that said injunction is still in force and there is no security to your orator against irreparable loss by reason thereof.

That when said Branch tendered satisfaction of his indebtedness by the foreclosure and sale of said mortgage property, your orator took it for granted that he had good title to the same, or would perfect it as soon as the title of his vendor thereto was settled in the State court,

where it was then being litigated, and which was very soon thereafter satisfactorily settled; that rather than loose his security in and
138 hold upon said property, he would at the time have gladly advanced the remaining purchase-money due therefor, as his firm had already advanced all the money that was ever paid upon said lands, and had also loaned to said Branch the gold which he tendered to his vendor in full payment of the remaining purchase-money, and demanded a deed therefor, which he was not able at the time to give, but which he perfected and tendered soon after to said Branch.

That, altho' legally and equitably bound to make such payment, said Branch wholely failed and refused to do so, and suit therefor was brought and appealed from the circuit to the supreme court of the State, by the decree of which latter the said circuit court was required to fix a day certain, by which said Branch should make payment in full and receive the deed tendered by his vendor, and, in case of failure, that said contract of sale be rescinded and that said Bolton repay to said Branch the original payment of $3,666.66, (which in fact
139 was advanced by said McGregor, Alloway & Co., and was the only money ever paid on said lands,) together with interest from Jan'y 10th, 1854, until paid. A copy of which decree, marked "X A," is made part hereof; that, before the mandate therein was filed in said circuit court, the war had suspended your honor's court. Your orator found it necessary to take shelter within the Federal lines, and soon after engaged in business in New York. The said Branch died. A long time ensued before an administrator was appointed, and hence your orator has been unable to obtain a decree that would enable him to interpose to save said lands.

Your orator states that the said circuit court fixed the 1st day of Jan'y, 1869, on or by which time the said purchase-money should be paid, and that in fact no part of it was paid. And in case of such failure said court further decreed that Seth W. Bolton, a citizen of Arkansas, and devisee of Isaac L. Bolton, the original vendor, should repay to Hector McNeill, the administrator of the estate of James H.
140 Branch, deceased, the original payment of $3,666.66, with interest at six per cent. from January 10th, 1854, which decree your orator avers has not in fact been obeyed, and the same remains wholely due and unpaid. Your orator states and insists that, by reason of the equities hereinbefore stated, he is entitled to the money decreed to be repaid as aforesaid, and that no one claiming under said James H. Branch should be allowed to avail themselves of his wrong to defeat the object of his said mortgage.

Yet your orator states he is informed and believes that after the filing of the mandate of said supreme court, which decreed that compliance with its provisions should "be the end of the whole matter," the answer and cross-bill of Mary E. Branch, claiming to be the widow of said James H., but who was not his wife at the time of the execution of the above-mentioned mortgage, was filed in said court against Hector McNeil as such administrator, setting up a pretended marriage-
141 settlement alleged to have been executed in 1864, which your orator charges was void in its face, and made to defend creditors of said James H; that it was not in fact recorded in the county of Desha in which said property was situated, or elsewhere, nor was it stamped, and was therefore void, either as marriage-settlement or mortgage.

That no legal consideration was acknowledged or received therefor, the said Branch being entitled to his wife's personal property and

choses in action by law; and that no proof in fact appears to have been made of anything having been received by him in consideration thereof

Yet, that the said McNeill, wholely disregarding his obligations and duties in the premises, made no defence thereto, but allowed a decree pro confesso to be taken in her favor; and he was directed, upon repayment of the above-mentioned sum of money, to hold the same for her use and benefit.

Your orator respectfully submits that either said McNeill did not regard himself as bound to respond to or litigate a claim of the
142 kind in that case, (the same being in fact ended by virtue of the supreme court decree therein,) or else that he fraudulently colluded with her to defraud the creditors of the estate therein; and that in either event the same is not binding. But should the same be decreed binding as to them, he submits that it does not conclude his rights in the premises, as he was not a party thereto, and the merits of his cause were not in fact adjudicated by the court, and he in fact knew nothing of the pendency of the claim or suit at the time.

But should this also be decided against him, he submits that the said decree is liable to reversal in the State supreme court, and he is entitled to a postponement of final hearing herein until such reversal shall be had; and to full and complete justice in this tribunal.

He charges that Mary E. Branch is not a resident of the State of Arkansas;

That she is insolvent, and moneys paid to her cannot be recovered again.

That the estate of James H. Branch is insolvent, scarcely able
143 to pay the indebtedness now probated against it in the State court, which does not include the claim of your orator; and unless the money above mentioned shall be decreed to him, he will not be able to recover one-fifth of the money due him.

That the lands mentioned in the mortgage were, in 1869, occupied and controlled by one D. A. Williams; and that he is occupying and cultivating the same the present year, (1870;) and annual rental value of said premises are about $3,000.00, and should be accounted for and paid over to your orator; and that he has no title to said premises.

He makes a copy of the pretended settlement exhibited by said Mary E. Branch, part hereof, marked "X B," and the decree of said court, also marked "X C," that your honors may see the truth of his allegations, and that he is not bound thereby.

He states that a full adjudication of his rights requires that the said Seth W. Bolton and D. A. Williams be made parties defendants, together with said H. McNeill, and that they are sufficient parties
144 to enable your honors to pass upon the merrits and to enforce satisfaction in the premises. The premises considered, he prayes that the said Seth W. Bolton and D. A. Williams be made codefendants with the said McNeill; that writs of subpœna issue against them; and that all of said defendants be required to answer all and singular the allegations hereinbefore made, and especially that they state and set forth—

1st. Are papers marked "X A," "X B," & "X C" correct exhibits, as charged; or do you believe them to be such?

2nd. Has the remaining purchase-money, or any part thereof, mentioned in "X A," been paid?

3rd. If not, have the $3,666.66, and interest from January 10th, 1854, or any part thereof, been refunded? If so, when and to whom?

4th. Who was in possession of and cultivating the Branch plantation

(herein mentioned) in 1869; also, in 1870; and what was a fair rental value thereof each year?

5th. Where does Mary E. Branch live? When was she mar-
145 ried? Does she own any property in Arkansas? Do you know that she owns any elsewhere?

6th. Is the estate of Ja's H. Branch solvent? What amount of indebtedness has been probated against it (exclusive of complainant's claim herein?) What is the estimated value of his estate; and of what does it consist?

7th. Did said McNeill make any opposition to the cross-bill of Mary E. Branch being filed? Did he file an answer thereto, or contest the same in any way; and, if they don't know the facts, that they state their opinions on oath in the premises?

That said McNeill answer all of said interrogatories; Seth Bolton the 2nd, 3rd, 4th, & 5th, and said Williams the 4th.

Your orator prays that, upon final hearing of this cause, the injunction be dissolved and said McNeill, adm'r, required to submit to judgment in the suit at law in such sum as your honors shall find due. That Seth W. Bolton be required to pay to your orator by a day certain, the $3,666.66, with interest from January 10th, 1854: and in default thereof, that said lands be sold to satisfy the same.

146 That said Williams be required to pay to your orator such amount of rent for such lands as shall seem equitable.

That said McNeill be required to have allowed and properly classed, the ballance that may be due your orator from the estate of said James H. Branch, deceased, after said credits shall be made, and for such other relief as may be just; and he will ever pray, &c.,

CLARKE & WILLIAMS, &c.,
W. G. & C. WEATHERFORD, *Sol's.*

STATE OF TENNESSEE,
*Shelby County:*

I, C. Weatherford, one of the solicitors for complainant, in the foregoing cross-bill, state on oath that, upon due investigation, I believe the statements therein contained to be true.

C. WEATHERFORD.

Sworn to and subscribed before me, the undersigned judge of the first circuit of Shelby Co., Tenn., this the 21st day of June, 1870.

C. W. HEISKELL,
*Judge of the 1st Circuit Court of Shelby County, Tennessee.*

147 "*X A*," *of amended cross-bill.*

ISAAC L. BOLTON
*vs.*
JAMES H. BRANCH. } In the supreme court.

* * * * The circuit court of Desha County, sitting in chancery, ought to have required Branch to pay the amount due upon the two bonds at the time of hearing the cause, including interest to the time, and costs incurred upon the judgment of Washington Bolton, accept Bolton's deed, and to have rendered such decree, as to costs, as appeared to it to be equitable.

For not doing so its decree is reversed. The case is remanded with instructions that Branch pay the money and receive the deed as above

choses in action by law; and that no proof in fact appears to have been made of anything having been received by him in consideration thereof

Yet, that the said McNeill, wholely disregarding his obligations and duties in the premises, made no defence thereto, but allowed a decree pro confesso to be taken in her favor; and he was directed, upon repayment of the above-mentioned sum of money, to hold the same for her use and benefit.

Your orator respectfully submits that either said McNeill did not regard himself as bound to respond to or litigate a claim of the
142 kind in that case, (the same being in fact ended by virtue of the supreme court decree therein,) or else that he fraudulently colluded with her to defraud the creditors of the estate therein; and that in either event the same is not binding. But should the same be decreed binding as to them, he submits that it does not conclude his rights in the premises, as he was not a party thereto, and the merits of his cause were not in fact adjudicated by the court, and he in fact knew nothing of the pendency of the claim or suit at the time.

But should this also be decided against him, he submits that the said decree is liable to reversal in the State supreme court, and he is entitled to a postponement of final hearing herein until such reversal shall be had; and to full and complete justice in this tribunal.

He charges that Mary E. Branch is not a resident of the State of Arkansas;

That she is insolvent, and moneys paid to her cannot be recovered again.

That the estate of James H. Branch is insolvent, scarcely able
143 to pay the indebtedness now probated against it in the State court, which does not include the claim of your orator; and unless the money above mentioned shall be decreed to him, he will not be able to recover one-fifth of the money due him.

That the lands mentioned in the mortgage were, in 1869, occupied and controlled by one D. A. Williams; and that he is occupying and cultivating the same the present year, (1870;) and annual rental value of said premises are about $3,000.00, and should be accounted for and paid over to your orator; and that he has no title to said premises.

He makes a copy of the pretended settlement exhibited by said Mary E. Branch, part hereof, marked "X B," and the decree of said court, also marked "X C," that your honors may see the truth of his allegations, and that he is not bound thereby.

He states that a full adjudication of his rights requires that the said Seth W. Bolton and D. A. Williams be made parties defendants, together with said H. McNeill, and that they are sufficient parties
144 to enable your honors to pass upon the merrits and to enforce satisfaction in the premises. The premises considered, he prayes that the said Seth W. Bolton and D. A. Williams be made codefendants with the said McNeill; that writs of subpœna issue against them; and that all of said defendants be required to answer all and singular the allegations hereinbefore made, and especially that they state and set forth—

1st. Are papers marked "X A," "X B," & "X C" correct exhibits, as charged; or do you believe them to be such?

2nd. Has the remaining purchase-money, or any part thereof, mentioned in "X A," been paid?

3rd. If not, have the $3,666.66, and interest from January 10th, 1854, or any part thereof, been refunded? If so, when and to whom?

4th. Who was in possession of and cultivating the Branch plantation

(herein mentioned) in 1869; also, in 1870; and what was a fair rental value thereof each year?

5th. Where does Mary E. Branch live? When was she mar-
145 ried? Does she own any property in Arkansas? Do you know that she owns any elsewhere?

6th. Is the estate of Ja's H. Branch solvent? What amount of indebtedness has been probated against it (exclusive of complainant's claim herein?) What is the estimated value of his estate; and of what does it consist?

7th. Did said McNeill make any opposition to the cross-bill of Mary E. Branch being filed? Did he file an answer thereto, or contest the same in any way; and, if they don't know the facts, that they state their opinions on oath in the premises?

That said McNeill answer all of said interrogatories; Seth Bolton the 2nd, 3rd, 4th, & 5th, and said Williams the 4th.

Your orator prays that, upon final hearing of this cause, the injunction be dissolved and said McNeill, adm'r, required to submit to judgment in the suit at law in such sum as your honors shall find due. That Seth W. Bolton be required to pay to your orator by a day certain, the $3,666.66, with interest from January 10th, 1854: and in default thereof, that said lands be sold to satisfy the same.

146 That said Williams be required to pay to your orator such amount of rent for such lands as shall seem equitable.

That said McNeill be required to have allowed and properly classed, the ballance that may be due your orator from the estate of said James H. Branch, deceased, after said credits shall be made, and for such other relief as may be just; and he will ever pray, &c.,

CLARKE & WILLIAMS, &c.,
W. G. & C. WEATHERFORD, *Sol's.*

STATE OF TENNESSEE,
*Shelby County:*

I, C. Weatherford, one of the solicitors for complainant, in the foregoing cross-bill, state on oath that, upon due investigation, I believe the statements therein contained to be true.

C. WEATHERFORD.

Sworn to and subscribed before me, the undersigned judge of the first circuit of Shelby Co., Tenn., this the 21st day of June, 1870.

C. W. HEISKELL,
*Judge of the 1st Circuit Court of Shelby County, Tennessee.*

147 "*X A*," *of amended cross-bill.*

ISAAC L. BOLTON } In the supreme court.
*vs.*
JAMES H. BRANCH. }

* * * * The circuit court of Desha County, sitting in chancery, ought to have required Branch to pay the amount due upon the two bonds at the time of hearing the cause, including interest to the time, and costs incurred upon the judgment of Washington Bolton, accept Bolton's deed, and to have rendered such decree, as to costs, as appeared to it to be equitable.

For not doing so its decree is reversed. The case is remanded with instructions that Branch pay the money and receive the deed as above

premises aforesaid, the said second party also hereby releases and relinquishes to the said first party her right and claim to dower in all the property, real and personal, he is now possessed of, or that he may hereafter acquire, and agrees and binds herself to receive and accept
155 the provision made for her by this deed in full discharge and satisfaction of the same.

And the covenants and stipulations and agreements of this deed are to be mutually performed by the parties or their representatives, and to that end each one binds himself and his or her heirs firmly by these presents.

And the said third party joins in this deed, to signify his approval of its provisions, and his acceptance of the trust reposed in him.

Witness the hands and seals of the said parties, at the county of Desha, the day and year first above mentioned.

This deed shall not so read that the party of the first part, if surviving the second party, shall keep an interest-account with his own children so long as he maintains and supports them properly.

The parties of the first and second part hereby reserve the right to amend, alter, or destroy this entire paper if they wish.

156 $30,000.00 was the value of the personal property before the war. Losses are to be deducted, and the value of said personalty actually turned over to her, inserted, as will be shown at the final settlement with the administrator of P. J. Watkins.

(Erasures on 1st, 2nd, & 4th pages made before signing, sealing, and delivering.)

JA'S H. BRANCH. [SEAL.]
MARY E. BRANCH. [SEAL.]
JOSEPH BRANCH. [SEAL.]

Witness:
ELI ADAMS.
JA'S MURPHY.

Acknowledged June 9th, 1867, before James Murphy, clerk, in due form, by Ja's H. and Mary E. Branch.

On the 5th day of August, '67, by *James* Branch, before same party, and no stamps.

157 *U. C.—Cross-bill.*

STATE OF ARKANSAS,
*County of Desha:*

Be it remembered that at a circuit court, begun and held in and for said county, at the court-house thereof, in the city of Napoleon, on the fourth Monday, it being the 26th day, of October, 1868, it being the time fixed by law for holding the fall term of said court;

Present and presiding, the Hon. John E. Bennett, judge of the first judicial circuit court.

Court was proclaimed in due form of law, when the following proceedings were had on the chancery side, to wit:

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| FRANCIS M. CASH, ADM'R, AND SETH W. Boulton, devisee of Isa'c L. Bolton, deceased, complainants, *vs.* JAMES H. BRANCH'S REPRESENTATIVES, def'ndants. | Bill in the nature of bill of revivor. |

Now, on this day, comes the adult parties hereto, by their respective solicitors, and the infant defendants, by I. M. Purnell, esq'r, their
158 guardian ad litem, and the said cause coming on to be heard on the bill in the nature of the bill of revivor, filed herein by Seth W. Bolton, by leave of this court, and the exhibits thereto, to wit: The will of the said Isa'c L. Bolton, deceased, and the transcript of the record and proceedings of the original cause in this court, as well as the mandatory decree and judgment of the supreme court of the State of Arkansas in said original cause; the answer of Hector McNeill, as administrator of the estate of James H. Branch, deceased; the answer of I. M. Purnell, esq'r, as guardian ad litem of the infant heirs of said James H. Branch, deceased; the answer and cross-bill of Mary E. Branch, widow of said James H. Branch, deceased; and the petition and answer and cross-bill of Wade H. Bolton: the deposition and proof in the cause—and the cause is fully argued by said solicitors; and the court being fully advised of and concerning the premises, and of the judgment which ought to be
159 rendered herein, doth order, adjudge, and decree that said cross-bill of Wade H. Bolton be dismissed without prejudice to any rights he may have in the subject-matter of this suit. And it is further ordered, adjudged, and decreed that said Hector McNeill, as administrator of the estate of James H. Branch, deceased, pay the said Seth W. Bolton, devisee of the said Isaac L. Bolton, the amount of the two notes in the original bill and proceedings mentioned, together with the interest and cost of said judgment of Washington L. Bolton, on or before the first day of January, 1869, and receive from the representatives of the estate of said Isaac L. Bolton the deed to said lands, tendered in the said original papers and proceedings. And it is further ordered, adjudged, and decreed that if the said Hector McNeill shall fail to pay said sums of money within the time herein specified, then said contract entered into between said Isaac L. Bolton and said James H. Branch on the 10th day of January, A. D. 1854, for the sale and purchase of the lands described in the original bill and proceedings
160 in this cause be, and the same is, hereby re'cinded; and that the said Francis M. Cash, as administrator, and said Seth W. Bolton, as devisee of said Isaac L. Bolton, deceased, shall cause the estate of James H. Branch to be released from the bond due on the 10th day of Jan'y, 1855, and surrender to the said Hector McNeill the bond due on the 10th day of January, 1856, and pay to the said Hector McNeill, as administrator of the estate of said James H. Branch, deceased, the sum of thirty-six hundred and sixty-six $\frac{66}{100}$ doll's (3,666.66,) with six per cent. interest thereon from the said 10th day of January, A. D. 1854, until payment shall be made hereunder, for the use and benefit of said Mary E. Branch, deceased, who is in possession of said land, and entitled to said sum of money, by reason of the equities set up in her answer and cross-bill herein. And it is further ordered, adjudged, and decreed that when the said sum of money, together with interest
161 thereon, is fully paid to the said Hector McNeill, for the use and benefit of said Mary E. Branch aforesaid, that she shall immediately deliver and give up possession of said land to said Seth W. Bolton: provided, however, if said money is not paid to said McNeill, to the use aforesaid, on or before the first day of Feb'ry next, 1869, the said Mary E. Branch, or her tenant in possession, shall have the right to retain, gather, and remove any crop which may be planted or growing on said land at the time of such payment. And the said Mary E.

Branch shall retain and have the possession of said lands until the full payment of said sum of money and interest to said Hector McNeill for her use and benefit. And it is further ordered, adjudged, and decreed that said Bolton's representatives and said Branch's representatives each pay one-half of the costs herein.

STATE OF ARKANSAS,
*County of Desha :*

162 I, James Murphy, county clerk in and for said county, and ex-officio clerk of the circuit court therein, do hereby certify that the above and foregoing pages contains a true and complete transcript of the record of a certain decree entered at the fall term, 1868, of said circuit court, in chancery, in a certain suit therein pending, wherein Francis M. Cash, administrator, and Seth W. Bolton, devisee of Isaac L. Bolton, deceased, were complainants, against James H. Branch's representatives, were defendants, as the same appears of record now in my office.

Given under my hand and seal of said court at office, this 29th day of April, 1870.

[L. S.] JA'S MURPHY, *Clk.*

Filed and writ issued July 27th, 1870.

CHA'S P. REDMAND, *Clerk.*
Per R. L. GOODRICH, *D. C.*

163 UNITED STATES OF AMERICA,
*Eastern District of Arkansas :*

Be it remembered that, at a circuit court of the United States of America in and for the eastern district of Arkansas, begun and holden on Monday, the 10 day of October, anno Domini one thousand eight hundred and seventy, at the United States court-room in the city of Little Rock, Arkansas, the honorable Henry C. Caldwell, district judge, presiding and holding said court, the following proceedings were had, to wit :

And on October 15th, A. D. 1870, as follows :

JAMES H. BRANCH, H. MCNEIL, ADM'R,
*vs.*
MCGREGOR, ALLOWAY & J. H. BANKHEAD.

Comes the complainant, Hector McNeil, by L. A. Pindall, his solicitor, and files herein his exception and answer to the amended and supplemental cross-bill of James Bankhead filed in this cause.

Which answer is in the words and figures following, to wit :

164 UNITED STATES OF AMERICA :

In the circuit court for the eastern dist. of Arkansas.

HECTOR MCNEILL, ADMINISTRATOR OF THE estate of James H. Branch, deceased, complainant,
*vs.*
JAMES BANKHEAD, SURVIVING PARTNER OF McGregor, Alloway & Co., defendants.

The separate answer of Hector McNeill, administrator of the estate of James H. Branch, deceased, to the pleading filed in the above-styled

cause against this respondent and others, by James Bankhead, one of the original defendants, and styled therein the amended and supplemental bill to a cross then before filed in said cause by said Bankhead. This respondant reserves exceptions to the filing of said pleading—

Because the said cause having been set down for hearing at this term upon issues long since joined, by an order made at the last term.

The cause ought not now to be re-opened, to admit new questions existing and known at the time the cause was so set for hearing.

The effect and manifest object of said pleading is to induce this
165 court to re-open and reverse the decree and proceedings in a cause long pending, and now finally determined in the courts of the State.

3. Because the questions attempted to be presented in said pleading cannot properly be heard, unless the said Mary E. Branch, and the heirs of James H. Branch, were made parties to the cause, and said pleading shows that said Mary E. Branch and said heirs are not within the jurisdiction of this court, and have no notice of this proceedings.

4. Because this court has no jurisdiction over the subject-matter of said pleading, already determined in the State court, or over the proper parties to said proceeding, who are not within the jurisdiction of this court, and who are indispensable parties.

5. Because the pretended equities, set up in said pleading, are irregularly and insufficiently presented to the court.

6. Because said pleading attempted to make new parties on a cross-bill, which cannot, by the rules of this court, be done.

166 This respondant, saving exceptions to said pleading, both for defects in substance and irregularities and insufficiencies in form, for answer to such parts thereof as he is advised that it is material for him to answer, says that the institution of said common-law suit, the filing of said bill for injunction, answer, and cross-bill, and the various proceedings thereon, as recited in said pleading, are all matters of record in this cause, and he refers thereto for a proper construction of their allegations and effects.

This respondant admits the death of Joseph Branch, and that he has no legal representative in this State, but states that he has no information to form a belief, whether his estate is solvent or insolvent; that he left a very large property in this State, and respondant is informed that the solvency of his estate will depend in a great measure upon the termination of a lawsuit now pending in this court, involving the title to all the property he left in this State.

This respondant, in reply to the indefinite and confused state-
167 ment in said pleading relating to the $3{,}666\frac{66}{100}$ dollars and its interest, so much coveted by said pleading, and as a history of the transaction and origin of this sum, respectfully show, that about the 10 January, 1854, James H. Branch contracted with Isa'c L. Bolton for the purchase of about 440 acres of land, and some accretions or made land not surveyed, for the sum of $11,000; that at the time of said purchase, he paid to said Bolton $3{,}666\frac{66}{100}$ dollars, parcel of said purchase-money, and executed to him his two bonds for a like sum, each due in 12 and 24 months, and that said Bolton executed to Branch his penal bond, conditioned for the conveyance of said lands; and this is the only title that said Branch ever had to said land; that shortly after the execution of this bond, and without having paid anything further on said land or obtaining other title thereto, the said Branch executed the supposed mortgage to McGregor, Alloway and Co., refer'ed to in
168 this cause, and subsequently convayed his equity of redemption

to Joseph Branch as a security for certain debts, &c.; that in the month of March, 1856, both said bonds to Bolton for the remaining installments upon said land being due and remaining unpaid, Bolton commenced a suit in chancery in the Desha circuit court, to enforce their payments against said land, and made the said James Branch, Joseph Branch, George McGregor, Nathaniel E. Alloway, and said James Bankhead, all parties defendant to said suit, the said James H. & Joseph Branch as resident, and the said McGregor, Alloway & Bankhead as non-residents of the State of Arkansas, and filed with his bill the proper affidavit that said McGregor, Alloway & Bankhead were non-residents; that all of said defendants were notified of said suit according to law, the resident defendants by process and the said non-resident defendants by order of publication, duly executed by advertisement, as required by law, and proof thereof regularly made and filed with the papers of the cause.

169 That said Bolton, in his said bill, set up the pretended claims of said Joseph Branch and said McGregor, Alloway & Co., and prayed to have them litigated. Respondant further states that, in addition to the constructive notice above mentioned, he is informed and believes that said Branch and McGregor, Alloway & Co. had actual notice of the pendency of said suit, and that they were made parties thereto, and were actually present in court a portion of said time, consulting with and aiding said Branch in his defence.

That said Joseph Branch, and said McGregor, Alloway and Co., although legally summoned, and, as respondant believes, having actual notice of said suit, set up no claim to said property, but made default; the said James H. Branch answered and filed a cross-bill, setting up certain supposed equities; said caused progressed to final hearing, and said bill, so filed by Bolton, was dismissed, and by the decree of said circuit court, entered of record at the term, 1858; the said Bolton was enjoined from collecting the value of said land; that said

170 Bolton appealed said cause to the supreme court of the State; that, at the October term, 1860, of said supreme court, the decree of said circuit court was reversed and set aside, and said court, proceeding to enter such decree as the circuit court ought to have rendered on the pleadings and proof, made and entered the decree exhibited with the pleading in this cause, marked X A. By the alternate order of said court, the said contract of 10th Jan'y, 1853, was cancelled, and, in a certain contingency, Branch was ordered to give up the lands to Bolton, and Bolton required to repay to Branch the $3,666\frac{66}{100}$ then paid on said land, together with its interest. This respondant further states that before the mandate of the supreme court could be carried into effect by the circuit court, both Bolton the payor, and Branch, the payee, of said money, died, and it became pertinent and necessary, in order to execute said decree, for said circuit court to decide who, of the several representatives of Bolton, should pay the money, and who, of the

171 several claimants under Branch, should receive the same; and these were the only questions open for discussion when the cause was revived in said circuit court, as hereinafter mentioned.

Respondant further states that, at the fall term, 1867, the said cause was r'vived in said circuit court by Seth W. Bolton, claiming as son and devisee of said Isa'c L. Bolton, who suggested the death of said James H. Branch, made the said Mary E. Branch, his widow, and his children, heirs-at-law of parties defendant, and notified them by publication, they being non-residents of the State.

Respondant further states, that at the fall term, 1868, this respondant

filed his petition, setting up his appointment as administrator of the estate of said James H. Branch, and prayed to be admitted as a party defendant to said suit, which being done, he filed his answer therein allegeing the inability of said estate to pay the two bonds due, and asking that the alternate order of said supreme court might be executed,
and the said Bolton required to pay the money therein mentioned
172 to this respondant for the benefit of said estate.

The infant heirs of said James H. Branch also answered by their guardian ad litem, praying the protection of the court.

The said Mary E. Branch also filed answer, allegeing that she was in the possession of said land, and setting up that her husband, the said James H. Branch, had, on the day of August, 1864, in consideration of certain property, which she then was about to receive from the estate of her late father, Paul J. Watkins, deceased, situated in the State of Alabama, and which, by the law of said State, was her sole and seperate property, and over which he had no control, had conveyed those lands to one Joseph Branch, by a trustee, for said respondant and her children. That, relying upon the validity of said convayance, she had released to said James H. said property, and that said James H. had received said property by virtue of said release, and used and disposed of it to his own use, and that said property was lost to said respondant. That she
was advised that said convayance was inoperative as against
173 Bolton, because of his want of title to said land, and that said
trustee was dead. She made said answer a cross-bill, and prayed that a trust might be decreed to exist in her favor, on said sum of money, and the same secured to her.

She exhibited said deed of trust, by copy, with said answer and cross-bill, as the same is exhibited in this cause, marked X B.

The said McGregor, Alloway & Co., defendants to said suit, again made default, and set up no claim to said property, and again failed to plead in said cause.

The issues in said cause were set down for hearing. At the hearing, respondant was represented by counsel, and is informed and believes that, at a subsequent day in said term, the said cause came on to be heard on the bill of said Seth W. Bolton, and the original papers in the cause exhibited therewith, the mandate of the supreme , the several answers above refer'ed to, and the cross-bill of Mrs. Branch and its
exhibits, and the testimony in the cause, which testimony, in
174 fact, consisted of proof of the executor of said deed of trust executed with Mrs. Branch' cross-bill; and, in this cause, as Exhibit X B, and of the receipt of certain property, by said James H. Branch, from the estate of said Paul J. Watkins, in the State of Alabama, on the faith of said deed of trust, and other testimony relating to said transaction and to the laws of Alabama.

Upon consideration whereof the Hon'l John E. Bennett, judge of said court, was of opinion and decreed, as in the decree exhibited in this case, marked Exhibit X C, which said decree was by the order of said court then and there entered of record, and in the full force and full effects unreversed, and to which no appeal has ever been taken.

Respondant further states that the records of said case remain in the clerke's office of said court; that they are very voluminous, and cannot be filed herewith without great expense; that if should be necessary
to the determination of this suit, he asks for a subpœna duces
175 tecum to said clerke to produce said records at the hearing of this
cause, or for leave to file copies thereof. Respondant also refers to this opinion and decree of said supreme court, published in 22 volume Arkansas decisions, page 436.

Respondant further says that all of said proceedings were had in the courts of the country, in the usual course of justice, and in a cause to which said Bankhead was a party, and denies the charge of collusion between the respondant and Mrs. Branch, with which said pleading is disgraced, and asserts that he acted in the whole matter under the responsibility of his oath and bond as such administrator, and by the advice of counsel; that he had some knowledge of the existence of said deed of trust, and that Branch received Mr'. Branch's property as alleged, and had heard that by the laws of Alabama that it was her seperate property. He had no reasons to doubt the good faith of
176 the transaction, and when said court decided said deed was good against Branch and his privies without being recorded, and that its effect was to create a trust in favor of Mrs. Branch upon money in question, he did not feel disposed to question its decree; he believed the case was fairly submitted to the court, and adjudicated, and he felt bound by the decree. Respondant insists that if there was error in the decree, or if he erred in relation thereto, the said Bankhead had his redress by appealing therefrom; that he was a party to the suit; set up no claim; that he had never probated his claim, or even notified respondant of its existence, but quietly slept upon his rights from 1859 to 1870.

Respondant fu'ther states that, since the last term of said court, said Bankhead has filed a bill of revivor in said cause simultaneous with the amended pleading filed in this cause, and if he has any rights not barred by his own laches, will have an opportunity to assert them therein; but respondant denies his right to assail said decree in this court.

177 Respondant, having fully answered all the allegations of said pleading he deems material, and expresses a willingness to answer any part thereof which he has omitted, and which may be deemed material, he proceeds to answer the interrogatories propounded.

To the first interrogatory, he says the papers, marked X A, X B & X C were not attached to the copy of pleading served on his solicitors, by the solicitors of said Bankhead, and he has never seen them, but in the foregoing answer he has treated them as correct, or that they would be correctly exhibited.

To the second and third interrogatories, he answers that no part of said d'fer'ed payments were ever paid to Bolton, and that no part of said 3,666$\frac{66}{100}$ dollars or any interest thereon has ever been paid to him, or to any one else to his knowledge.

To the fourth interrogatory, he answers that, by the decree e'hibited with the pleadings marked X C, entered in said cause, Mrs. Branch
178 was allowed to retain the possession of said land until the said sum was paid to her, and that she rented the same for the years 1869 and 1870 to David A. Williams, and respondant thinks from 1,500 to $1,800 was a fair rental value for each of said years for said land.

To the fifth interrogatory, he answers that he is informed that Mary E. Branch lives at Courtland, in the State of Alabama; that she has no property in this State, except her interest in her late husband's estate.

That he does not know of any property which owns elsewhere; that he is informed that she is entirely dependant upon the proceeds of the property in question for a support and the ma'ntainence and education of her large and helpless family.

To the sixth interrogatory, he answers that the estate of James H. Branch is insolvent; that about the sum of 3,300 dollars has been probated against it, and the claims of said McGregor, Alloway & Co. have never been probated; that assets remaining on administered

179 consist of about 790 acres of land, mostly wild and uncultivated. Respondant supposes 4,000 dollars to be about a fair valuation therefor.

To the seventh interrogatory, he answers that he took no steps in said case, except such as are recited in this answer above mentioned, *i. e.*, he interple'd in said cause, claimed the money for to be administered, and submitted assets arising upon the pleadings between Mrs. Branch and respondant fairly to the court having jurisdiction, and submitted to its decision.

And now, having fully answered, he prays to be hence dismissed with his costs.

PINDALL AND GARLAND AND NASH,
*For Adm'st.*

180 UNITED STATES OF AMERICA,
*Eastern District of Arkansas:*

Hector McNeill, administrator of James H. Branch's estate, makes oath; states that the matters and things as stated in the foregoing answers of his own knowledge are true in substance and in fact, and that those things therein stated on information he believes to be true.

H. McNEILL.

Subscribed and sworn to before me, on this 3rd day of October, A. D. 1870.

L. A. PINDALL,
*U. S. Com'r.*

Filed Oct. 15, 1870.

FRANK E. WRIGHT, *Clerk.*

181 And, on October 24th, A. D. 1870, as follows:

JAMES H. BRANCH, H. McNEIL, ADM.,
*vs.*
McGREGOR, ALLOWAY & J. H. BANKHEAD.

And now comes the complainant, by L. A. Pindall, esq., his solicitor, and come the defendants, by Clark and Williams and Weatherford, their solicitors, and by agreement this cause is set down for hearing on the second Monday of December next.

And on November 8th, A. D. 1870, as follows:

HECTOR McNEIL, ADM'R OF THE ESTATE OF James H. Branch, deceased,
*vs.*
JAMES BANKHEAD, SURV'ING PARTNER OF McGregor, Alloway & Co.

182 Come the complainants, by Clark and Williams, their solicitors, and the defendants, by L. A. Pindall, and the exceptions of the said defendant, heretofore filed, to the amended and supplemental bill of the said complainant, came on to be heard, and were argued and submitted to the court. Whereupon, the court being of the opinion that said exceptions, and particularly the exception that said amended and supplemental bill was filed out of time, it is, therefore, ordered and

decreed by the court that said exceptions be sustained, and that said amended and supplemental bill be stricken from the files.

183 UNITED STATES OF AMERICA,
*Eastern District of Arkansas:*

Be it remembered that, at a circuit court of the United States of America, in and for the eastern district of Arkansas, begun and holden on Monday, the 10th day of April, anno Domini one thousand eight hundred and seventy-one, at the United States court-room in the city of Little Rock, Arkansas, the honorable John F. Dillon, judge of the circuit court of the United States for the 8th judicial circuit, presiding, & Hon. Henry C. Caldwell, district judge, and holding said court, the following proceedings were had, to wit:

And, on April 11, A. D. 1871, as follows:

JAMES H. BRANCH, H. MCNEIL, ADM'R,
*vs.*
MCGREGOR, ALLOWAY & J. H. BANKHEAD.

And now come the parties by their respective solicitors, L. A. Pindall, esq., for complainant, and Clark and Williams and Weatherford for defendants, and this cause is heard, argued, and submitted to the court.

And, on April 12th, A. D. 1871, as follows:

HECTOR MCNEIL, AS ADMINISTRATOR OF the estate of James H. Branch, de-
184 ceased,
*vs.*
JAMES BANKHEAD, SURVIVING PARTNER OF McGregor, Alloway & Co.,
AND
JAMES BANKHEAD, AS SURVIVING PARTNER of McGregor, Alloway & Co.,
*vs.*
HECTOR MCNEIL, AS ADMINISTRATOR, ET AL.

And now, on this day, these original and cross-causes came on to be heard, and were argued by counsel. Whereupon, it is ordered, adjudged and decreed that the said James Bankhead, complainant in the cross-bill, do have and recover from the said defendant Hector McNeil, as such administrator, the sum of eight thousand dollars, the sum admitted to be due by the said James H. Branch, in his original bill, together with the sum of four thousand and four hundred dollars, it being the interest on the said sum of ($8,000,) eight thousand dollars, at
185 the rate of (5) five per cent. per annum, from the filing of the said original bill, to wit, the 16th day of April, 1860.

It is further ordered, adjudged, and decreed that the said defendant, Hector McNeil, upon the receipt of the said sum of three thousand six hundred and sixty-six dollars and sixty-six cents, ($3,666.66,) and the interest thereon, heretofore decreed by the circuit court of Desha County, to be paid to him by said Francis M. Cosh, administrator, and Seth W. Bolton, as devisee of the said Isaac L. Bolton, deceased, and stated in the pleadings herein, or any part thereof, do immediately thereon, pay the same over to the said complainant, James Bankhead, and the same

shall be so received by him as part payment of this decree, and shall be credited thereon. And it is further ordered that the said complainant, Bankhead, have leave hereafter to institute such further proceedings herein against the said representatives of Isaac L.
186 Bolton, or others in possession of the said lands, as shall enable him to obtain the benefit of this decree as against them.

And it is further ordered, adjudged, and decreed that said defendant, McNeil, as such administrator, pay the costs of this suit, and the suit at law referred to in the original bill.

And on April 14th, A. D. 1871, as follows:

JAMES H. BRANCH, HECTOR MCNEIL, ADM'R.
*vs.*
MCGREGOR, ALLOWAY, & J. H. BANKHEAD.

Comes the defendant, by L. A. Pindall, esq., his solicitor, and prays an appeal from the decree herein rendered to the Supreme Court of the United States, which prayer is allowed by the court.

Among the records is the following transcript, to wit:

187 STATE OF ARKANSAS.
*County of Desha:*

Be it remembered that, at a circuit court begun and held in and for the county of Desha, on the chancery side thereof, at the court-house at the city of Napoleon, on the 29th day of October, A. D. 1866, it being the time fixed by law for holding said court—present and presiding, the Hon. W. M. Harrison, judge.

Court was proclaimed in due form of law, when the following proceedings were had, to wit:

ISAAC L. BOLTON,
*a.*
JAMES H. BRANCH, JOSEPH H. BRANCH, AND GEORGE MCGREGOR.

On this day, on motion, the mandate and opinion of the supreme court of Arkansas is filed, which opinion and mandate is in the words and figures following, to wit:

STATE OF ARKANSAS,
*In the Supreme Court, set:*

188 Be it remembered that, at a term of the supreme court of the State, begun and held at the court-house in the city of Little Rock, on the first Monday October, A. D. 1866, among other' were the following proceedings had, to wit:

ISAAC L. BOLTON, APPELLANT,
*a.*
JAMES H. BRANCH, JOSEPH BRANCH, GEORGE MCGREGOR, et. al., appellee'. } Appeal from Desha circuit court, chancery.

This cause came on to be heard upon transcript of the record of the circuit court of Desha County, in chancery, and was argued in this court the solicitors of the parties. On consideration whereof the, it is opinion

of the court that said circuit court *court* in chancery in this cause, and in dismissing the original bill, and in rendering perpetual the injunction granted in the cross bill; whereas said court ought to have required that said James H. Branch pay, at the time of hearing of the cause herein, the amount due upon the said two bonds, with
189 interest, and the costs upon the judgement of Washington Bolton, and that he accept Bolton's deed. It is therefore ordered and decreed that the decree of said circuit court in chancery be, and the same is hereby, reversed, annulled, and set aside, and that this cause be remanded to said circuit court in chancery, with instructions that said James H. Branch be required to the amount of principal and int'rest on said two bonds to the complainant therein, and the cost in the said judgement of Washington Bolton, and receiv*e*d the said deed offered by said complainant within some reasonable time, to be fixed by the court, and if he shall fail to do so within such time, then said circuit court in chancery shall decree that said contract of sale be re'cinded; that Branch give up the lands to Bolton; that Bolton, the complainant, cause Branch to be rel*ae*sed from the judgement of Washington Bolton on the bond first due, and pay to him the amount he paid upon the land, with int'rest from the time of payment, without any ac-
190 count of rents and improvements between the parties. It is further ordered and decreed that each part*ie* pay one-half of the costs in the court below and in this court.

In testimony that the above is a true copy of the decree of the said supreme court in this cause, I, Luke E. Barbour, clerk thereof, set my hand and official seal this 19th day of October, A. D. 1866.

[L. S.] L. E. BARBOUR, *Clerk.*

Ordered, that court do now adjourn until court in course.

W'M M. HARRISON, *Judge.*

STATE OF ARKANSAS,
*County of Desha:*

Be it remembered that at a circuit court began and held in and for said county, at the court-house in Napoleon, on the third Monday in November, A. D. 1867, it being the time fixed by law for holding said court—present and presiding, the Hon'e W'm M. Harrison,
191 judge.

Court was proclaimed in due form of law, when the following proceedings were had, to-wit:

ISAAC L. BOLTON
*v.*
JAMES H. BRANCH.

Now, on this day, came Francis M. Cash, administrator with the will annexed of Isaac L. Bolton, deceased, estate, who was the former complainant in this cause, and on motion suggests to the court here that said complainant died in the month of , A. D. 1865, at his domicil in Shelby County, Tennessee, and that he, the said Cash, was, by the probate court of said county, by letters dated on the 8th day of July, 1865, duly appointed administrator with the will annexed on the estate of the said Bolton, dec'd, and files herein copies of said letters, and asks that this cause may be revived and progress in his name.

And thereupon came Seth Bolton, by petition, which is filed herein, and representing to the court that he is the devisee of said Isaac
192 L. Bolton, and lately complainant in this cause, and as such and by the last will and testament of his said testator entitled to the possession of the lands in controversy in this cause, and ask' permission to file his bill in the nature of a bill of revisor, and that he be allowed to appear herein and set up his rights.

It is therefore ordered by the court that said cause be revived and progress in the name of the said Francies M. Cash, as administrator with the will annexed of said Isaac L. Bolton, deceased, and that said Seth W. Bolton have leave to file his bill in the nature of a bill of revisor herein.

Thereupon the said Seth W. Bolton, by Pindalls & Randolph, his solicitors, appeared and filed his bill of revisor, representing and showing to the court that at in March, A. D. 1856, his ancestor and devisor, the said Isaac L. Bolton, commenced a suit in the chancery side of this court against James H. Branch and others, the object and general nature of which was to enforce the payment of the purchase-money for certain lands in Desha County, Arkansas, therefor bargained and
193 sold by the said Isaac L. Bolton to the said Branch, commonly known as the old Belleville place, and more particularly described in the bill and proceedings in said cause; that said suit progress to a final hearing, and at the October term, 1858, of this court, the true chancellor thereof dismiss said complainant's bill; that said complainant, at said term, obtained an appeal from said judgement and final decree of this court, to the supreme court of the State of Arkansas, and that a full, true and complete transcript of the record and proceedings in this cause be duly and legally certified to said supreme court.

That said cause come on to be heard in said supreme court at its October term, 1860, and was fully arg'ed and considered; and said supreme court, being fully advised of and concerning the merits of this decree, did order and decree that the judgment and decree of this court be annulled and set aside, and did further order and decree that this cause be remainded to this court, with instruction "that said James H. Branch be required to pay the principal and interest
194 on said two bonds to said complainant, and the costs of said judgement of Washington Bolton, and recieve the deed offered in this cause within some reasonable time to be fixed by this court; and if he shall fail to do so within such time, then that this court in chancery should decree that such contract of sale to be re'cinded; that Branch give up the lands to Bolton; that Bolton, the complainant, cause Branch to be realeased from the judgement of Washington Bolton, on the bond first due, surrender to him the bond last due, and pay to him the amount he paid upon the lands, with int'rest from the time of payment, without any account of rents and improvements between the parties;" and that, at the October term, 1866, of this court, the said mandatory decree of said supreme court was filed here in open court; further representing that, by the causealities of the late war, the records of this cause remaining in this court was lost, and that there remains none more of the original papers in the archieves of this
195 court; that said Seth W. Bolton has procured from the clerk' offiice of said supreme court a full, true, and complete transcript of the records of this court in this cause; and further representing that, since the determination of this cause in said supreme court, to wit, in the year 1865, his ancestor, the said Isaac L. Bolton, died, leaving a

will, which was afterwards duly probated in the probate court of said county of Shelby, and files herewith a copy of said will; that by the provissions of said last will and testament, the said Isaac L. Bolton, deceased, devised and bequeathe' all his int'rest in the lands in controversey in this cause to the said Seth W. Bolton, and that the said Francis M. Cash was, by the laws of Tennessee, the domicil of said deceased, appointed administrator with the will annexed of said deceased; and further showing that, since the determination of this cause, to wit, in the month of , 1867, that the said James H. Branch died in Desha County, leaving Mary E. Branch, his widow, and James Branch, Joseph Percy Branch, Susan Branch, and Branch, an infant heir surviving, his heir at law; and that said widow and heirs are not
196 now resident of this State; further representing that said estate of said Branch, deceased, is insolvant, and unable to pay said judgement-notes and costs, and that said Branch and his representatives have had the possession and profits of said place since the contract for the purchase thereof, and are still in possession thereof; and that possession and profits are and have been very valuable to them; and further showing that no part of said lands *as* the proceeds thereof, will be needed for the payment of the debts of the said Isaac L. Bolton, deceased.

Said bill prays that the transcript of said original papers may be filed in lew of the original, so lost as aforesaid, and in all things, for the purposes of this suit, be taken as evidence of the contents of said originals; that this suit be revived against the widow and heirs of said James H. Branch, deceased, hereintofore set forth, and that said widow and heirs be notified thereof by publication, according to law; and that said Francis M. Cash be requred to answer this bill, particularly
197 as to whether his said testator, by his said last will and testament, did not devise and bequeath his int'rest in the lands in controversey to your orator, and whether any part of said lands, or the proce'ds thereof, will be required to pay the debts of his said testator; and that said widow and heirs of said James H. Branch be required to pay said money to said Seth W. Bolton within a time to be fixed by the court, and in default thereof that said contract of sale be re'cinded and cancelled, and that said lands be given up to said Seth W. Bolton, and that the int'rest on said sum to be paid back by said Isaac L. Bolton, be set off against the rents and profits of said place, while so held by said Branch and his representatives.

Thereupon it is ordered by the court that said transcript of said original record be filed in this court, and be taken and considered as evidence of the contents of said original; and that said Mary E. Branch, widow, and James H. Branch, Joseph H. Branch, Percy Branch,
198 Susan Branch, and Branch, infants, heirs of said James H. Branch, , have notice of these proce'dings by publication according to law; and that said Frances M. Cash be required to answer particularly inter'ogations propounded to him by Seth W. Bolton in his bill of revivor, and this cause is continued.

Ordered that court do now adjourn until court in course.

WM M. HARRISON, *Judge.*

199 ISAAC L. BOLTON, COMP'T.
*vs.*
JAMES H. BRANCH, DEF'T.

To the Hon'l WM M. HARRISON, *judge:*

Your petitioner, Seth W. Bolton, respectfully represents that, as dev-

isee of said complainant, he has an important interest dependent upon the decision of the above-entitled cause: that the original complainant and principal defendant are dead: and he therefore prays for permission to file his bill in the nature of a bill of revivor, and that this suit progress in his name, and that he may have opportunity to be heard in his behalf through himself and solicitor: and as in duty bound he will ever pray, &c.

SETH W. BOLTON.

(Endorsed:) Filed in open court, Nov'r 27, 1867.

JA'S MURPHY, *Clerk.*
By J. M. PINNELL, *D. C.*

200 I. L. BOLTON, COMP'T.
*vs.* In chancery.
JA'S H. BRANCH, DEF'T.

To the Hon'l W'm M. HARRISON, *judge*

Seth W. Bolton, son and devisee of I. L. Bolton, dec'd, former complainant in this cause, brings this his bill in the nature of a bill of revivor in the original suit above-entitled, and respectfully represents that in March 1856, his ancestor I. L. Bolton commenced on the chancery side of this court a suit against James H. Branch and others, the object and general nature of which was to obtain payment of the purchase-money for certain lands in Desha County, Arkansas, commonly known as "the Old Bellville Place" more particularly described in the original bill and proceedings in said cause, theretofore bargained and sold by said Isaac L. Bolton to said Branch: that said suit progressed in this court
201 to a final hearing at the October term, 1858, of this court, the Hon'l John C. Murr'y then chancellor thereof by the final decree of said court dismissing said bill: that said complainant at said term prayed for and obtained an appeal from said decree to the supreme court of the State, and that a full, true and complete transcript of the record and proceedings in this cause were duly and legally certified to said supreme court.

That said cause came on to be heard in said supreme court at the October term, 1860, and was fully argued and considered; and said supreme court being fully advised of and concerning the merits of the cause did order and decree that the decree of this court be reversed, annulled, and set aside, and by its mandatory order, duly entered of record in said court at said term, did order and decree that this cause be remanded to this court with instructions that said James W. Branch be required to pay the principle and interest on said two bonds and the costs of
202 the judgment of Washington Bolton and receive the deed offer'd in this cause, within some reasonable time to be fixed by this court; and if he shall fail to do so within such time, then this court shall decree that said contract of sale shall be res'inded, and that Branch give up the lands to Bolton: that Bolton cause Branch to be released from the judgment of W. Bolton on the bond first due, surrender to him the bond last due, and pay to him the amount he paid on the lands, with interest from the time of payment, without any account of rent and improvements between the parties; it was further ordered that each pay one-half the costs in this cause and in the supreme court, and that afterwards, to wit, at the October term, 1866, the said mandatory decree of said court was filed in this court and remains upon the records of this court.

202 Your orator further states that by the casualities of the late war the records of said cause remaining in this were lost, to wit, about the year 1862, and that there now remains none of the original papers in the archives of said court. That your orator has procured from the clerk's office of said supreme court a full, true, and complete transcript of the records of this cause.

Your orator further represents that since the determination of this cause in said supreme court, to wit, in the month of , 1865, the testator, the said Isaac L. Bolton, died at his residence in the county of Shelby, in the State of Tennessee, leaving a will which was afterwards duly proven and probated in said county of Shelby, a copy of which is annexed, marked "E & A;" and that F. M. Cash was, by the probate court of said county of Shelby, on the 8th day of July, 1865, duly appointed administrator with the will annexed of his estate.

204 That by the provisions of said will, said testator bequeathed all his interest in the lands in controversy in this suit to your orator, as by reference to said will will more fully appear.

That since the determination of this suit in said supreme court, to wit, in , 1867, the said James H. Branch died in Desha County, Arkansas, leaving Mary E. Branch, his widow, and James H., Joseph, Persy, Susan, and , an infant, all his children, surviving, all minors, and that since his death, said widow and children have removed from the State of Arkansas to the State of Alabama, and they are not now residents of this State.

That no administration has been had in this State upon the estate of said James H. Branch, and your orator is not advised whether he left a last will or not, or died intestate.

Your orator represents that he is informed, and charges the
205 fact to be, that the estate of said Branch is insolvent, and unable to pay the judgment, costs, &c., as they are required to do by the order of said supreme court; and that said Branch and his representatives have remained in possession of said lands, and enjoyed the profits of said plantation, since the contract for the purchase thereof, and are still in possession thereof; and that the said rents and profits have been valuable to, and are of *grate* value to them.

That he is informed, and charges the fact to be, that no part of the lands in controversey, or the proceeds thereof, will be required to pay the debts of the said I. L. Bolton, dec'd.

Your orator therefore prays your honor that the transcript of the original papers so procured from the clerk's office in the supreme court be filed in lieu of the originals, and in all things be taken, for the
206 purposes of this suit, as evidence of the of said original records.

That this suit be revived against the widow and heirs of said James H. Branch, dec'd, and that they, the widow and heirs of said , be notified thereof by publication according to law; and that said F. M. Cash be required to answer this bill, particularly as to said testator did not by his last will and testament devise and bequeath his interest in the lands in controversy to your orator, and as to whether any part of said lands or their proceeds will be required to pay the debts of said testator; and that said widow and heirs of said James H. Branch be required to pay said money to your orator, according to the decree of said supreme court, within a time to be fixed by this court.

And should they fail to pay said money, interest, and costs, by said day, then that said contract be cancelled, and that said lands be given up to your orator, and that the interest on said sum so required

207 by the order of said supreme court, to be paid your orator as devisor, be set off against the rents and profits of said place while it has been so held by said Branch and his widow and heirs.

PINDALL & RANDOLPH.
*Solicitors for Seth Bolton.*

I do solem'ly swear that the statements made above are true so far as stated on my own knowledge; those stated on information, I believe be true, and that the widow and heirs of said James H. Branch are now residents of the State of Alabama.

SETH W. BOLTON.

Sworne to before me this 22d Nov.

JA'S MURPHY, *Clerk.*

(Endorsed:) Filed in open court Nov'r 23rd, 1867.

JAMES MURPHY, *Clerk.*
By J. M. PINNELL, *D. C.*

208 In the Desha circuit court, on the chancery side thereof.—Fall term, 1867.

ISAAC L. BOLTON
*vs.*
JAMES H. BRANCH.

Now, on this day, comes F. M. Cash, administrator, with the will annexed of J. L. Bolton, dec'd, complainant in this cause, and Seth W. Bolton devisee of said I. L. Bolton, dec'd; and suggests to the court here the death of said I. L. Bolton; and it being shown by affidavid that James H. Branch, defendant her'in, has departed this life, leaving Mary E. Branch, his widow, and James H., Joseph, Percy, Susan, and Branch, his heirs at law surviving, and that said widow and heirs are non-residents of the State of Arkansas: It is among other things order'd that this suit revive and progress in the name of F. M. Cash, adm'r, and that said widow and heirs be notified of the pendency of this suit, the object of which is to obtain payment for certain lands sold by com-
209 prainant to defendant, or resision of said contract, by publication of this order, in some newspaper printed and published in the State of Arkansas, for the number of times, and within the time prescribed by law; and that unless they shall appear by themselves or attorneys, on or before the 4th day of the next term of our said circuit court, at a court to be begun and holden in Napoleon, on the 3rd Monday in May next, and plead, answer, or demur to said bill, the same will be taken as confess'd; and a decree entered accordingly.

JAMES MURPHY, *Clerk.*

Attes'd April 4th, '68.

PINDALL & R., *Sol's.*

Personably appear'd before the undersigned, clerk of the circuit court of Chicot County, Arkansas, G. C. Gatewood, one of the publishers of the "Chicot Press," a newspaper published in the town of Lake Village, who being duly sworn deposes and says, that an order of the chancery court of Desha County, Arkansas, in the cause of Isaac L. Bolton
210 vs. James H. Branch, a true copy of which is hereto annexed, has

been published in said paper for two suc'sive weeks, the last of which was on the 11th day of April, 1868.

G. C. GATEWOOD.

Sworn to before me this 25th April, 1868.

JA'S. M. MURROY, *Clerk.*

F. M. CASH, AD'R, ET AL'S,
*vs.*
JA'S H. BRANCH'S HEIRS.

Comes J. M. Pinnell, who has heretofore been appointed guardian for the infant heirs of Ja's H. Branch, dec'd, and answers for said infants, and says that he knows nothing of the matters in controversy of his own knowledge, but denies all the allegations and statements in said bill, and cross-bill, so far as they affect the interests of said infants, and puts their interests and rights herein in the hands of the court, and
211 prays that the same may be protected thereby.

J. M. PINNELL, *Guar.*

(Endorsed:) Filed in open court Oct'r 28, 1868.

JA'S MURPHY, *Clerk.*
By BOB DORAN. *D. C.*

*Will of Isaac L. Bolton.*

SHELBY CO., TENN.,
*Oct. 9th*, 1863.

I, Isaac L. Bolton, of the county of Shelby and State of Tenn., being this day of sound mind and body, but knowing the certa'nty of death and the uncertainty of life, do make this my last will and testament, (revoking all other wills and testaments.)

1. I give my soul to God and my body to mother dust.

2. I give to my wife Lucinda Bolton, $5,077\frac{50}{100}$ in gold that I have already given her, which comes in as a valuation to her of that amount, and charge to her out of my estate, which amount of money went into her possession 10 days ago and charged to her on my valuation book.

212 3. I give to my daughter, Louisa Dickens, 534½ acres land, the place she now lives on, valued and paid for by me, including what I paid for the houses, $11,088.00. I have give' and placed in her possession 6 negros: Jake, Allen, Gus, Frank, Julia, & Martha, valued at $6,352.00, and 1 clay-bank mare, valued at $100.00; whole valuation $17,942.00.

4. I have also give' to my daughter, Josephine Dickens, ½ of a lot on Adams street, sold by Sam'l Dickins for $5,000; 1 negro man, Jerry, $1,150; Jane & child, $1,200; Mary, $950; Wyatt, $900; Henry J., $1,175; Ann, $1,100; one piano, $500; one carpet, $50; 204 acres land, Talahatshie Co., of Etherge by me at $1,800, makeing in all $12,075.00. The balance of my property in Tenn., both real and personal, I wish sold by my executor and proce'des deliver'd to my two daughters, Wade and Louisa, until they reach in valuation the amount Louisa has, and also Josephine, brought up in valuation to Louisa. My wife Lucinda, after to her the $5,077.00, already valued to her, is to have property until she reaches the sum of $15,000.00, which property is

213 in loan to her for her support during widowhood or natural life, but whenever she marries, the property to go to my legel heirs, but should she never mar'y, this property to be hers or in use for her during her natural life, then to de'cend to my legal heirs. Any children I may have by her *is* to have an equal portion of my estate with the children of my first wife, provided my estate will be sufficient to bring them up with Louisa, but under no circumstance are any of them to pay back anything. I give to my son, Seth W. Bolton, entire interest, both real and personal, in Desha Co., Arkansas, by his paying to my estate or other heirs the $15,000.00. I have paid for the places with the exception of my inter'st in the Graves' place, which I want, after selling it, appropriated the proce'des to my other heirs. After my children be made equal to Louisa, then the balance of my estate, if any, to be equally distributed among my children, the valuation of negros to be equalized. I want my executors to set Ann Eliza & her two children free. I also free my woman Harriet, for the devotion she has shown me when
214 the jay-hawkers ware after me. The balance of my servants, for their devotion to Abe Lincoln, I would be glad, if it can be done, to ship every one of them to Cuba, or the worst place on the continent and sell them for their bad conduct since the war started. I appoint my brother Wade H. Bolton, executor to carry out my will without giving security.

ISAAC L. BOLTON.

I, G. P. Ware, clerk of the county court of Shelby County, Tenn., do hereby cirtify, that the above and foregoing is a correct coppy of the will of Isaac L. Bolton, dec'd, as appears from the original now on file in my office.

In testimony whereof I have set my hand and official seal of office, 25th August, 1865.

[SEAL.] G. P. WARE, *Clerk.*

In the Desha circuit court in chancery.

F. M. CASH, AD'R ET ALS., }
*vs.* }
JA'S H. BRANCH'S HEIRS. }

The petit'oneof Hecto rMcNeal administrator of Ja's H. Branch, dec'd, respectfully states, that his Ja's H. Branch, died, was in
215 his life-time the princip*le* defendant in the above entitled cause.

That he departed this life intestate, leaving as stated in the bill of of Seth W. Bolton, herein; that since the last term of this court petitioner has been appointed administrator of said Ja's H. Branch's estate, by the probate court of Desha County, having jurisdiction thereof, a copy of which letters will be attached, if required.

That there are int'rests important to said estate depending upon the determination of this suit; therefore he prays that he be permitted to intervene as a party defendant, and to file his seperate answer heerin, and to set up and defend the interest of said estate involved in this suit. And as in duty bound he will ever pray, &c.

HECTOR MCNEIL,
*Ad'r Estate of J. H. Branch, Dec'd.*

(Endorsed:) Filed in open court Oct. 28, '68.
JA'S MURPHY, *Clerk.*
By BIL DUNCAN, *D. C.*

216 F. M. CASH, ADM'R, ET ALS.,
*vs.*
JA'S H. BRANCH'S HEIRS.

The separate answer of Hector McNiel, adm'r estate of Ja's H. Branch, dec'd, to the bill in the nature of a bill of of Seth W. Bolton, filed in the above-styled cause, (leave of the court being first had and obtained.)

This defendant, saveing and reserving, &c., for answer, says he admits that I. L. Bolton, the ancestor of comp't, Seth W., in his lifetime commenced this suit against def'ts James H., as alleged in said bill of ; that the same was dismissed, an appeal taken, and the amandatory decree of the supreme court and the judgment to be in this court substantially as the same is set forth in said bill of ; def't also admits the insolvency of the estate of James H. Branch, dec'd, and that the assets in the lands of this petitioner or belonging to said estate are entirely inadiquate to the payment of the several amounts due upon said land; wherefore he prays that
217 the alternate of said supreme court may be , and that said F. M. Cash, adm'r, and Seth W. Bolton, heir of said Isaac L. Bolton, may be adjudged and decreed to refund and pay over to this defendant the sum of $3,666.00, with interest thereon from the time said Bolton received the same, until the present time, according to said supreme court's decree; and that said money may be paid to this defendant before he shall be compelled to relinquish possession of said land, and that said sum may be a lien on said land until paid.

E. RANDOLPH,
*Sol'r for Def'ts.*

(Endorsed:) Filed in open court Oct. 28th, '68.
JAMES MURPHY, *Clerk.*
By BOB DORAN, *D. C.*

218 F. M. CASH, AD'R, ET ALS., COMP'TS,
*vs.*
JA'S H. BRANCH'S REP'S, DEF'TS. } In chanc'ry. Fall term, '68.

The separate answer of Mary E. Branch to the bill in the nature of a bill of revivor of Seth W. Bolton, filed her'in, and to which this respondant is made a party defendant.

This defendant, saving and reserving, &c., for answer to so much as she is advised is material for her to answer, says she admits the institution of the original suit in chancery by I. L. Bolton, now dec'd, against her late husband, Ja's H. Branch, dec'd, the chancellor's decree dismissing said bill, the appeal therefrom, and the judgment of the supreme court reversing said decree, and that said sup. court decreed as in said bill of revivor is remited.

This defendant, further answering, says she is advised that the estate of James H. Branch is insolvant, and will be entirely inadiquate to pay the balance of the purchase-money for said lands, and that under the supreme court decree the contract between said Isaac L. and her late

219 husband will have to be cancelled. That she is in possession of said land under and by virtue of the order of the Desha probate court's *order*, until her dower in the real estate of said James W. Branch is duly assigned and set aside to her. She states and charges that on the day of A. D. 1864, said James H. Branch, in consideration of certain property which this defendant then was about to from the estate of his father, Paul G. Watkins, dec'd, then late of the county of Lawrence, Alabama, valued at $30,000.00, being and to her made, executed, and into a certain contract of settlement with one Joseph Branch, as trustee, and his successors, for the use and benifit of this defendant, by which said James H. Branch conveyed said real estate to Joseph Branch, as trustee for her children, the minor def'ts in this cause, as will more fully and at large appear, reference being had to said deed of conveyance, a copy of which is attached to this answer marked " ." The original is in the possession of the representatives of said Joseph Branch, and cannot be produced by this defendant.

220 She further states that, relying upon the good faith of said settlement, she conveyed and transfer'd, relinquished, and delivered to her said husband the right to reduce to possession said distributive share of said Watkins' estate, which, by the law of Alabama, the *council* of said Watkins was her sole and separate property, over which her said husband had no control.

That by virtue of said conveyance and settlement, and said release and relinquishment of this defendant, said Jane H. Brance received and reduced to possession said distributive share of this defendant, in the estate of said Watkins, dec'd, to wit, in cash on hand, paid to him by the adm'r of said estate, the sum of about $10,000.00, and stores, mules, a wagon, farming utensils, &c., about the sum of $20,000.00.

This defendant further says that said James H. Branch used and applied said sums of money, stores, stock, and other personal property to the payment of his debts, the stocking and cultivating of said place, and to his own proper use and benifit; and that the same is lost to this defendant; and she is, with her large family of helpless children, reduced to penury and absolute want, unless this court will raise

221 and decree a trust on said property to her use and benefit; that she is advised by her council that her husband had no right to convay and settle this property upon her, except so far as he had paid for the same, and that said deed of settlement is inoperative and void as to the complainant in this suit; but she is advised and insists that it is the pow'r of this court to decree that said money be paid to her husband's estate by complainant, under the alternate order by this court, shall be paid to her, or so setteled to her exclusive benifit and behalf, or held in trust for her sole benefit or behalf.

This defendant, further answering, says that Joseph Branch, in said deed of settlement, is now dead, and that there is no one to protect her interest herein. Wherefore she prays to have this answer made a cross-bill her'in, and that the admin'strator of said Branch be required to answer the same, and said money, so to be paid by said complainants, to be appropriated and paid to her, and for such and

222 relief as in equity she is entitled to. And as in duty bound she will, &c.

J. PINDALL, *Sol'r.*

(Endorsed:) Filed by consent and the order of the court.
JA'S MURPHY, *Clerk.*

( not endorsed filed at all.)

STATE OF ARKANSAS,
*County of Desha:*

Be it remembered that, at a circuit court began and held in and for said county, at the court-house thereof, in the city of Napoleon, on the fourth Monday, it being the 26 day of October, A. D. 1868, it being the time fixed by law for holding the fall term of said court; present and presiding, the Hon'l John E. Bennett, judge of the first judicial circuit court, court was proclaimed in due of law, when the following proceedings were had in the chancery side, to wit:

FRANCIS M. CASH, ADM'R,
*vs.*
BRANCH BRANCH, ET AL.

223 Now, on this day came Wade H. Bolton, by his solicitor, and, on motion, files his petition her'in, praying to be made party defendent hereto, and, on further motion, said Wade H. Bolton is granted time to file his answer and cross-bill hereto.

And also comes said complainant, by solicitors, and, on motion and leave first had and obtained, files her'in the proof of publications made herein as to the non-residents defendant of the minor, and minor heirs of James H. Branch, dec'd. And it appearing to the satisfaction of the court that the following infant heirs of said James H. are without legal guardianship known to this court, the court, on motion, doth appoint Jasper M. Pinnell, esq'r, guardian ad li., therefor, to wit, James, Joseph B., Piercy B., Susan B., and Branch.

FRANCIS M. CASH, ADM'R,
*vs.*
JAMES A. BRANCH, ET AL.

224 On this day comes Hector McNeil, by solicitor, and, on motion, files his petition to be made defendant her'in, as the administrator of said James H. Branch, and, on further motion, the answer of said McNeil, as such administrator, is filed. And also comes Jasper M. Pinnell, gua'dian ad l., and, on motion, files his answer herein.

FRANCES M. CASH, ADM'R, AND SETH W. BOLton, devisee of Isaac L. Bolton, dec'd, complainants,
*vs.*
JAMES H. BRANCH'S REPRESENTATIVE', DEfendants.
} In chancery.

Bill in the nature of a bill of revivor.

Now, at this day comes the parties, by their respective solicitors, and the infant defendants, by J. M. Pinnell, esq'r, their guardian ad litem, and the said cause coming on to be heard on the bill in the nature of a bill of revivor filed herein, *off* Seth W. Bolton, by leave of this court, and the exhibit thereto, to wit, the bill of the *sead*
225 Isaac L. Bolton, dec'd, and the transcript of the record and proceedings of said original cause in this court, as well as the mandatory decree and judgment of the supreme court of the State of Arkansas in said original *course*; the answer of Hector McNeil, as adminis-

trator of the estate of James H. Branch, dec'd; the answer of J. M. Pinnell, esq'r, as guardian ad litem of the infant heirs of said James H. Branch, dec'd; the answer and cross-bill of said Mary E. Branch, widow of said James H. Branch, dec'd, and the petition, answer, and cross-bill of Wade H. Bolton; the depositions and proof in this *course* and the *course* is fully argued by their respective solicitors.

And the court being fully advised of and concerning the premises, and of the judgment which ought to be rendered herein, doth order, adjudg', and decree that said cross-bill of said Wade H. Bolton be dismissed, without *projustice* to any rights he may have in the subject-matter of this suit.

And it is further ordered, adjudged, and decreed that said
226 Hector McNeil, as administrator of the estate of James H. Branch, dec'd, pay to said Seth W. Bolton, devisee of said Isaac L. Bolton, the amount of the two notes in the original bill and *per*ceedings mentioned, together with the interest thereon, and the costs of said judgment of Wa'hington L. Bolton on or before the 1st day of Jan'y, A. D. 1860, and reci've from the representatives of the estate of said Isaac L. Bolton, the deed to said lands tender'd in said original papers and proce'dings. And it is further ordered, adjudged, and decreed that if the said Hector McNeil shall fail to pay said sums of money within the time herein specified, then said contract entered into between said Isaac L. Bolton and said James H. Branch, on the 10th day of Jan'y, A. D. 1854, for the sale and purchase of the lands described in the original bill and proceedings in this *c*ouse be, and the same is hereby, res'inded; and that the said Seth W. Bolton, as devisee of said Isaac L. Bolton, dec'd, shall cause the estate of said James H. Branch to be rel*ea*ved from the bond due on the 10th day of Jan'y, 1855, and surrender to the said Hector McNeil
227 the bond due on the 10th day of Jan'y, 1856, and pay to the said Hector McNeil, as administrator of said James H. Branch, dec'd, the sum of $3,666.00 *dollars*, with six per cent. int'rest thereon from the said 10th day of Jan'y, 1854, until payment shall be made hereunder, for the use and ben*i*fit of said Mary E. Branch, widow of said James H. Branch, dec'd, who is in the possession of said lands, and is entitled to said sum of money by reason of the equities set up in her answer and cross-bill herein.

And it is further order'd, adjudged, and decreed that when said sum of money, together with the int'rest thereon is fully paid to said Hector McNeil for the use and benefit of said Mary E. Branch aforesaid, that she shall im'ed*i*'*et*ly deliver and give up the posses'ion of said lands to the said Seth W. Bolton; provided, however, if said money is not paid to said McNeil to the use, &c., as aforesaid, on or before the 1st of Feb'y next, 1869, the said Mary E. Branch or her tenant in pos-
228 session shall have the right to retain, gather, and remove any crop which may be planted or growing on said land at the time of such payment, and the said Mary E. Branch shall retain and have the possession of said lands until the full payment of said sum and interest to said Hector McNeil, for her use and benefit.

STATE OF ARKANSAS,
*County of Desha:*

I, James Murphy, county clerk in and for the county of Desha, do hereby certify that the above and foregoing pages contain*s* a full and complete transcript of the record, order of publication, petition, pleadings, exhibits, and test*a*mony in the above cause from the originals as they appear

of record in my office, from the time of the filing of the mandate of the supreeme court at the October term, A. D. 1866, of this court, until the final decree therein.

In testimony whereof I, James Murphy, as such clerk, hereto set my hand and affixed my official seal at my office this 6th day of Dec'r, A. D. 1870.

JAS. MURPHY, *Clerk.*
By BOB DORAN, *D. C.*

229 UNITED STATES OF AMERICA,
*Eastern District of Arkansas:*

Be it remembered that, at a circuit court of the United States of America, in and for the eastern district of Arkansas, begun and holden on Monday, the 10th day of April, anno Domini one thousand eight hundred and seventy-one, at the United States court-room in the city of Little Rock, Arkansas, the Honorable Henry C. Caldwell, district judge, presiding and holding said court, the following proceedings were had, to wit:

And on April 15th, A. D. 1871, as follows:

JAMES BANKHEAD
*vs.*
HECTOR MCNEIL, SETH W. BOLTON.

Comes James Bankhead, by Clark and Williams and Weatherford, his solicitors, and files herein his petition to compel payment of money into court.

Which petition is in the words and figures following, to wit:

United States circuit court for the eastern district of Arkansas.

To the honorable judges of said court in chancery sitting:

230 James Bankhead, who is a citizen of the State of Tennessee, brings this his petition, and thereupon represents that he is informed and believes that the decree of this court heretofore rendered in his behalf, and now remaining in full force against Hector McNeil, of Desha County, in this State, to the effect that he, the said McNeil, should, upon the receipt of the sum of $3,666.66, with the interest therein decreed to be paid to him as the administrator of the estate of James H. Branch, by the circuit court of said Desha County, from Francis McCosh, as administrator, and Seth W. Bolton as devisee of Isaac L. Bolton, deceased, should immediately pay the same over to your petitioner, to be credited upon his your petitioner's judgment or decree against him, will be rendered wholly ineffectual and useless to your petitioner, by the said 'Cosh and Bolton failing and omitting to pay over the said sum of money to said McNeil; and he states that he has good reason to believe and does believe that there is a design and
231 confederacy by and between the said McNeil, Seth W. Bolton, Francis M. Cosh, and the Mary E. Branch, widow of James H. Branch, deceased, and others, whose names are not known to your petitioner, to cheat, wrong, and defraud him out of the said sum of money, by procuring the same to be paid over to the said Mary E. Branch, the said widow of the said James H. Branch, deceased, upon a pretended

claim set up by her, but which is wholly fraudulent and void as against your petitioner's right to the said money; and he alleges that the judgment and decree of the circuit court of Desha County, so far as the same requires the said McNeil to hold the said money when paid to him in trust for, and to pay the same over to, the said Mary E. Branch, was frudulently procured by the said persons, so confederated and combined, in order to defeat your petitioner's claim thereto; your petitioner not being a party to such proceedings, and said court having no means of knowing or considering your petitioner's right to said money.

232 And he is further informed, and believes, that the said McNeil, or some other or all of the said confederated parties have possession of the said lands so mortgaged to your petitioner, and have the same rented out from year to year, and are permitting the said Mary E. to draw the rents thereof from the tenants thereof, in payment of the said sum so decreed to be paid by the said Cosh and Bolton to the said McNeil. That, as fast as such rents are so drawn by her, or for her use, they are credited with the same on the debt, and that it is the design of said parties when the said debt shall be fully paid off by such rents, to surrender the lands up to said Seth W. Bolton, and to give them a clear acquittance against the said decree.

And he alleges that he believes that he will, by means of such fraudulent contrivances and practices, lose the benefit of his said decree, and will be wholly unable to obtain said money unless he can obtain

233 the decree of this court against the said Seth W. Bolton, who is the real party in interest in the said decree of the said Desha circuit court, requiring him to pay the said money into this court, or a decree for the possession or the rents of said lands, or both. And he alleges that the said lands are now in the possession of David A. Williams as the tenant of said Neil, or some other of the said parties. That said Mary E. Branch is not a resident of the State of Arkansas, nor is the said Cosh, as he is informed, but he alleges that said Seth W. Bolton is a resident. He therefore prays that said tenants, Williams and the said Bolton, may be made parties to this petition; that said Bolton be required to show cause why he should not be decreed to pay the said money into this court, or to your petitioner, and that in the mean time a receiver may be appointed by this court for the purpose of and with directions to take possession of the said lands, or to collect and re-

234 ceive the rents thereof as fast as they shall become due, and that the petitioner may have such other or further relief in the premises as shall be agreeable to equity, and that in the mean time a writ of injunction may be issued, restraining the said Bolton from paying the said money to any other party than to said McNeil, or into this court, and restraining said tenants from paying the rent of said lands to any one except to said receiver; and your petitioner will ever pray.

M. G. WEATHERFORD,
CLARK & WILLIAMS,
*Solicitors for Petitioner.*

STATE OF ARKANSAS,
*County of Pulaski:*

I, Solomon F. Clark, attorney and agent for the above petitioner, being duly sworn, do depose and say that James Bankhead, the petitioner, is not a resident of this State; that he is now absent; that I am somewhat acquainted with the facts set up in the foregoing petition,

235 and I verily believe the facts so stated therein to be true.

SOL. F. CLARK.

Sworn to and subscribed in open court this day of April, 1871.
Filed April 15th, 1871.

FRANK E. WRIGHT, *Clerk.*

And which subpœnas are in the words and figures following, to wit:

236 UNITED STATES OF AMERICA,
*Eastern District of Arkansas:*

The President of the United States to Seth W. Bolton & David A. Williams, greeting:

We command and strictly enjoin upon you, that, laying all other matters aside, and notwithstanding any excuse, you and each of you be and personally appear before the judges of our circuit court of the United States in and for the eastern district of Arkansas, in chancery sitting, on the fifth day of June, A. D. 1871, it being the first Monday of June next, wheresoever the said court shall then be, and there to answer a bill of complaint exhibited against you in our said court by James Bankhead; and to do further and receive what our said court shall have considered in that behalf. And this you are not to omit, under penalty of what the law directs.

In testimony whereof Hon. Salmon P. Chase, Chief Justice of the [L. S.] Supreme Court of the United States, has caused the seal of said circuit court to be hereunto affixed this 15th day of April, A. D. 1871, and in the 95th year of our Independence.

Attest:

FRANK E. WRIGHT, *Clerk.*

N. B.—The defendants are required to enter their appearance in the above cause in the clerk's office of this court, on or before the 5 day of June, 1871, or the bill will be taken pro confesso against them.

FRANK E. WRIGHT, *Clerk.*

237 Returned & filed May 20th, 1871.

FRANK E. WRIGHT, *Clk.*

*Rule for service of process.*

The service of all subpœnas shall be by delivery of a copy thereof, by the officer serving the same to the defendant personally, or, in case of a husband and wife, to the husband personally, or by leaving a copy thereof at the dwelling-house or usual place of abode of each defendant, with some free white person, who is a member or resident in the family.

(Indorsed:) No. . U. S. circuit court, eastern district of Arkansas. In chancery. vs. .
Subpœna and respondendum. Issued, ; returnable, ; returned and filed, . , clerk.
, solicitor for complainant.

I have served the within subpœna on the within-named D. A. Williams & Seth W. Bolton on the 12th of May, 1871, by delivering to each of them a copy of the same in their own proper person, at Desha

County, in the eastern district of Arkansas, on this 12th day of May, A. D. 1871.

R. F. CATTERSON,
*U. S. Marshal for East. Dist. Ark.*
By A. A. EDGINGTON,
*Deputy Marshal.*

Mileage, 21.00.
Services, 6.25.

27.25.

238 UNITED STATES OF AMERICA,
*Eastern District of Arkansas:*

The President of the United States to David A. Williams, greeting:

We command and strictly enjoin upon you that, laying all other matters aside, and notwithstanding any excuse, you and each of you be and personally appear before the judges of our circuit court of the United States in and for the eastern district of Arkansas, in chancery sitting, on the fifth day of June, A. D. 1871, it being the first Monday of June next, wheresoever the said court shall then be, and there to answer a bill of complaint exhibited against you in our said court by James Bankhead; and to do further and receive what our said court shall have considered in that behalf. And this you are not to omit, under penalty of what the law directs.

In testimony whereof Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the United States, has caused the seal of said [L. S.] circuit court to be hereunto affixed this 17th day of April, A. D. 1871, and in the 95th year of our Independence.

Attest:

FRANK E. WRIGHT, *Clerk.*

N. B.—The defendant required to enter appearance in the above cause in the clerk's office of this court, on or before the day of , 18 , or the bill will be taken pro confesso against .

*Clerk.*

239 Returned and filed May 20, 1871.

FRANK E. WRIGHT, *Clerk.*

*Rule for service of process.*

The service of all subpœnas shall be by delivery of a copy thereof, by the officer serving the same, to the defendant personally, or, in case of a husband and wife, to the husband personally, or by leaving a copy thereof at the dwelling-house or usual place of abode of each defendant, with some free white person, who is a member or resident in the family.

(Indorsed:) No. . U. S. circuit court, eastern district of Arkansas. In chancery. vs. .
Subpœna ad respondendum. Issued, ; returnable, ; returned and filed, ; , clerk.
, solicitor for complainant.

I have served the within subpœna on the within-named David A. Williams, by delivering to him a true copy of the same, at Desha County,

in the eastern district of Arkansas, on this 12th day of May, A. D. 1871.

R. F. CATTERSON,
*U. S. Marshal for East. Dist. of Ark.*
By A. A. EDGINGTON,
*Deputy Marshal.*

240 And on June 14th, A. D. 1871, the following further proceedings were had, to wit:

JAMES BANKHEAD
*vs.*
SETH W. BOLTON, DAVID A. WILLIAMS, Hector McNeil.

And now, on this day the said defendants appeared, and the said Bolton and Williams filed their joint and several answers, and the said McNeil filed his several answers to complainant's petition, to which said several answers the said complainant filed his several replications; and thereupon, on motion of the said complainant, due notice to the defendants having been given—

It is ordered that James P. Clayton, of Desha County, be, and he is hereby, appointed a receiver in chancery in this case, with authority and directions to demand, collect, and receive from the defendant, David A. Williams, or other person or persons in possession of the
241 Belleville plantation, or plantation lately belonging to James H. Branch, deceased, and purchased by him of Isaac L. Bolton, deceased, situate in Desha County, such amount of rents for said plantation as shall be just and reasonable for this current year, and for future years, until further ordered by the court, unless the said Williams or other person in possession shall prefer to give up the possession of such land to paying rents therefor, in which case he is authorized and directed to receive possession of the said lands, and rent the same out for the highest attainable rent, until the further order of this court; and he is directed to hold and safely keep all such rents so collected and received by him subject to the order of this court; and he is authorized to execute all necessary papers, and to institute and prosecute all suits necessary to the performance of such duties, provided that before he enters upon his duties as such receiver he shall execute bond to the United States, in trust for whom it may concern, with good and
242 sufficient security, to be approved by the clerk of this court, in the penal sum of two thousand dollars, conditioned for the faithful performance of his duties as such receiver, unless such bond shall be waived by the parties.

And it is further ordered that a writ of injunction be issued, according to the prayer of the plaintiff's petition, enjoining and restraining the said defendants Williams and Bolton, or either of them, from paying to Mary E. Branch, widow of said James H. Branch, deceased, or to any one for her, any part of the moneys decreed by the Desha circuit court to be paid by the said Bolton upon the recision of the contracts for said lands between said Branch and said Isaac L. Bolton in their life-time, or from paying to her, or any one except the said receiver herein appointed, any part of the rents or accruing profits of the said Belleville plantation, but to pay such rents or accruing profits over to said receiver not only for the present, but ensuing years, until the further orders of this court, or, on the contrary, to deliver the said plantation to such receiver, whichever he or they shall prefer.

243 And it is further ordered that such writ of injunction be issued by the clerk of this court; that this cause be set for hearing at the next term hereof upon the plantiff's petition and exhibits, answers and exhibits, replications and proofs to be then had, and that the parties have leave to take depositions generally to be used upon the trial.

And it is further ordered that if the said defendants shall pay over to said receiver the full amount of the said decree of the Desha circuit court referred to, they shall be exempt from the payment of rent upon the said lands.

Which joint and separate answer of Bolton and Williams is in the words and figures, to wit:

In the circuit court of the United States for the eastern district of Arkansas.

JAMES BANKHEAD
*vs.*
HECTOR MCNEIL ET AL.

244 The joint and separate answer of Seth W. Bolton and David A. Williams to the petition of David Bankhead to said court in the above-described cause.

These defendants, for answer to said petition, or such parts thereof as they are advised that it is material for them to answer, most positively deny that there is any design or confederacy on part of these defendants, either by and between themselves, or by, between, or with the said Hector McNeill, Francis M. Cosh, Mary E. Branch, or any other person or persons whatsoever, to cheat, wrong, or defraud said petitioner out of the sum of money described in said petition, or any other sum, either by procuring the same to be paid over to Mrs. Mary E. Branch or otherwise.

These defendants most positively deny that the judgment or decree of the circuit court of Desha County, referred to in said petition, was fraudulently procured by these defendants or any other persons confederating or combining to defeat said Bankhead's claim, or for any other purpose, or that said decree was fraudulently procured at all, or was or is invalid.

245 These defendants further deny that said Bankhead was not a party to the proceedings in said court, or had no means of knowing of such proceedings.

These defendants admit that they have possession of said land, and claim the same as their own, but deny that the same are rented, or that the said Mary E. Branch is, or, at the time of filing said petition, was, drawing the rents thereof, either for the payment of said sum, or for any other purpose, or under any authority or pretense whatever, or that there is, or ever was, any design to pay off said sum by the rents as alleged, or that when said rents should amount to said sum, to surrender the possession to said Bolton, and to give him or any one for him a clear acquittance against said decree, or that there is, or was, any fraudulent contrivances or practices contrived, practised, or contemplated by these defendants, either for the injury of said Bankhead or the benefit

246 of Mrs. Branch, or by any other persons or for any purposes, so far as they know or believe.

This respondent, the said Seth W. Bolton, states that by virtue of the

said decree, rendered in the year 1860, in the supreme court, to which the said Bankhead was a party, and by which he was bound, it was among other things in certain contingenc'es decreed that the said Isaac L. Bolton should pay to said Branch the sum of money described in the petition and receive back the possession of said lands. That the said Bolton and Branch having died, and the respondent, Seth W. Bolton, being desirous to conform to said decree and repossess himself of said lands, caused said suit to be revived against said original parties defendant and the representatives of such as were dead. That from necessity he brought into court Mrs. Branch and her children, who were the only representatives of said Branch, there being at that time no administrator of said Branch's estate. That his only and sole object was to have the decree of the supreme court conformed, to obtain, in
247 the manner prescribed in said decree, either the payment of the two bonds unpaid or the recision of said contract. That at the time said suit was so revived the said Mrs. Branch filed her cross-bill, claiming said funds by reason of a resulting trust claimed from some equities set up in said cross-bill, and these respondents insist that the said Bankhead might and ought to have ever used the same vigilance if he to or relied upon any equities, claims, or rights to said fund. That such further proceedings were had that said circuit court decreed a cancellation and recision of said contract, and recognized, established, and decreed a trust upon said fund in favor of Mrs. Branch, and by its decree vested the total beneficiary right to said money in said Mrs. Mary E. Branch, and further decreed that she should hold the possession of said land until said fund was paid to her. That these respondents had nothing whatever to do in procuring said trust to be established. That they were not the agents for said Bankhead, or in
248 any wise authorized to present his claims to said court, and that they had no personal knowledge of his claims, or any constructive knowledge thereof except such as were afforded by the record of a mortgage in which no particular lands were described or certain amount mentioned, and which had lain dormant for near 14 years, so far as they knew, and such as was afforded by the unanswered allegations in the bill of Isaac L. Bolton, in which said mortgage was alleged to be a fraudulent contrivance. The said Seth Bolton, further answering, that from and after the rendition of said decree in the fall of 1868, he was very much embarrassed in his finances, was utterly unable to pay said sum and redeem said land. That in the spring of 1870 he entered into an agreement with his co-defendant D. A. Williams, by which he agreed to sell one-half of said lands to said Williams, in consideration of which, among other things, said Williams agreed to pay the incumbrance
249 to Mrs. Branch and redeem said lands, and this respondent would thereby receive one-half of the rents of said land. That after this agreement was made, and before the same was executed, to wit, about the first of May last, 1870, he first heard of the pretended claim of James Bankhead, and about the month of June last he heard that said Bankhead had commenced a proceeding in this court to establish his right to this fund, and that his right thereto would be determined last October. That this action of said Bankhead delayed the consummation of the agreement with said Williams, and that this respondent thereby lost one-half of the rents of said place for the year 1870, valued at about 750$. That about the month of November last he learned that the amended bill of said Bankhead, setting up claim to said fund, had been heard in this court, and determined adversely to his pretended claims. He then renewed and consummated his

250 agreement with said Williams, and the said Williams paid and satisfied the claim of Mrs. Branch, and thereupon the said Williams and this respondent recovered the possession of said lands, and now hold the same as their own.

The said respondent, D. A. Williams, further answering, says that he rented said lands from the said Mary E. Branch, at public outcry, for the year 1869, at about the sum of 1,500$, and at private contract, for the year 1870, for the same sum. That for said two years he held under her, as her tenant, and paid her all of the rents thereof.

That in the spring of the year 1870 he entered into an agreement with the said Seth W. Bolton, by which he purchased of him one-half interest in said land, and among other considerations agreed to pay off and discharge the encumbrance of Mrs. Branch and to redeem said lands, and to allow said Seth W. Bolton one-half of the rents of said land for 1870, and thereafter to hold said lands as tenants in common with said Bolton. That he immediately entered into a corre-
251 spondence with Mrs. Branch, to procure her relinquishment of possession, rights, &c., but before such contract was accomplished, to wit., about the month of April or May last, he, for the first time in his life, heard of the claims of said Bankhead, and that said Bankhead would commence proceedings in this court to enforce his claims. That this respondent was extremely anxious to procure an interest in said property, as a home, but was not willing to involve himself in a lawsuit, or to be a party to any conflicting rights of either Bankhead and Mrs. Branch; and, being informed that their respective rights would be determined at the October term of this court, 1870, then next, he delayed and broke off his contract with Mrs. Branch, with a view to redeem from the party who should be successful in establishing their claims.

Respondent further states that said Bankhead did, on or about the 7th June last, file his amended and supplemental cross-bill in this
252 court, setting up a claim to said sum of money, and that the said Hector McNeil was regularly made a party thereto. That at the October term of this court the said Hector McNeil filed his exceptions and answer to said amended and supplemental cross-bill, and that the question of Bankhead's rights to this fund was submitted to this court and argued, and decided adversely to the claims of said Bankhead, and that said exceptions to said cross-bill and claims of Bankhead were, by a proper order, judgment, and decree of this court, sustained, and said supplemental and amended cross-bill and the pretended claims of said Bankhead were stricken from the files of this court, to wit, on the 8th day of November, 1870.

That this respondent, believing that this disposition of the matter was final, and that the pretended claims of said Bankhead *was* finally disposed of by said decree, and having already suffered the loss of one year's rent by reason of said claim, he immediately consummated
253 the arrangement with said Bolton hereinbefore set forth, as will be seen by reference to a copy thereof hereto attached as exhibit A to this answer, and also entered into a contract with Mrs. Branch for the relinquishment of her rights to said land for the said sum of three thousand six hundred and six *six* $\frac{66}{100}$ dollars, with interest thereon at six per cent. from the date of said original contract between Bolton and Branch until the date of said contract between respondent and Mrs. Branch. That this respondent, at said date, to wit, 23d day of November, 1870, paid the said Mrs. Branch two thousand dollars, in cash, and his draft upon his commission merchant for two thousand

dollars, payable March 1st, 1871, and his negotiable promissory note, due the said Mrs. Branch, for some three thousand two hundred and seventy dollars, payable 1st January, 1872.

That said agreement was made with the said Mrs. Branch, and her said interest and claim paid and satisfied, in accordance with his
254 previous contract with said Seth W. Bolton, and for his benefit, and as part consideration for the purchase of said one-half interest in said land.

These respondents jointly answering, state that the said sum of money so paid to Mrs. Branch was paid strictly under the decree of the Desha circuit court, was openly and finally consummated after this court had refused to disturb the decree of said State court.

They deny all the charges and in'uendoes of fraud, connivance, or duplicity charged or insinuated in said petition, and ask the protection of this court in their rights acquired under the decree of said State court.

And these defendants say that there is no equity in said petition, and they demur to the same, and for special cause for demurrer, these respondents insist that the said Mary E. Branch is an indispensible party in this proceedings and she is not made party therein or brought in any proper manner to this court, and they ask the benefit of
255 such demurrer on the final hearing.

GARLAND & NASH,
*For Def'ts.*

This agreement entered into on this 12th day of November, 1870, by and between Seth W. Bolton of the first part, and David A. Williams of the second part, both of Desha County, in the State of Arkansas, witnesseth, that the said Seth W. Bolton of the first part has, for the consideration *of* hereinafter named, bargained and sold, and agreed to convey to the said David A. Williams, one undivided half interest in and to his, the said Bolton's, interest in the place known as the Branch place on which the said Williams now lives, and which is in litigation; for which the said Williams agrees to pay the sum of ten thousand dollars and to bear and pay two-fifths of the costs and expenses of said litigation, including attorney's fees, court and clerk, witness fees, &c., *is*
*nu*ll for the suits now pending in the circuit court of Desha
256 County against the said Bolton for said place as those hereafter to be brought either by or against him. Out of the said ten thousand dollars aforesaid the said Williams is to pay off and discharge the incumbrance entailed upon said place by the decree of the supreme court of the State of Arkansas, in the case of Isaac L. Bolton against James H. Bankhead et al., now amounting to something near the sum of $7,300, (seven thousand three hundred dollars,) and the balance of said ten thousand dollars to be paid to the said Seth W. Bolton. For the consideration aforesaid the said Seth W. Bolton agrees, upon the determination of said suits now pending in the Desha circuit court, to transfer and convey to the said David A. Williams, by good and sufficient deeds, a one undivided half of whatever interest he may have, as ascertained by said suits, in said plantation, described as follows: The south
frac'l half of sect. two, (2;) the N. W. q'r of sect' eleven, (11,)
257 and the northwest fourth of the northeast quarter of said sect' 11, all in township nine, (9,) range two, (2,) being the said lands once bargained by Isaac L. Bolton in his life-time to James H. Branch, and which contract was cancelled by the supreme court.

The said Williams agrees to immediately *to* relieve the said planta-

tion of the encumbrances of said decree, and to pay the balance of said ten thousand dollars within twelve months from this date. Each party to pay one-half of the taxes on said land for State and county purposes.

Witness the following signatures and seals.

(Signed) SETH W. BOLTON. [SEAL.]
DAVID A. WILLIAMS. [SEAL.]

EXHIBIT A.

UNITED STATES OF AMERICA,
*Eastern District of Arkansas:*

Seth W. Bolton and David A. Williams, the defendants filing
258 the foregoing answer, solemnly swear that the matters and things as therein stated as of their own knowledge are true in substance and in fact, and that the matters and things as therein stated on information, they believe to be true.

SETH W. BOLTON.
DAVID A. WILLIAMS.

Subscribed and sworn to before me on this 20th day of May, 1871, at the eastern dist. of Arkansas aforesaid.

L. A. PINDALL,
*U. S. Com'r.*

Filed June 6th, 1871.

FRANK E. WRIGHT, *Clerk.*

Which separate answer of Hector McNeil is in the words and figures following, to wit:

259 In the circuit court of the United States for the eastern district of Arkansas.

The separate answer of Hector McNeil to the petition (or bill of complaint,) of James Bankhead exhibited in said court against this respondent and others.

This respondent for answer to such parts of said petition (bill of complaint) as he is advised that it is material for him to answer, denies that there is any design or confederacy by and between this respondent and Seth W. Bolton, Francis M. Cash, Mary E. Branch and others, or any, or either of them, or any other person or persons, to cheat, wrong, or defraud said petitioner (complainant) out of the sum of money described in said petition, (bill,) or any part thereof, or any other sum, right, or thing to him belonging, either upon a claim or pretended claim of Mrs. Mary E. Branch, or upon any other pretense whatever.

This respondent also denies that the judgment or decree of the circuit court of Desha County, described in said bill, (petition,) or any part thereof, was fraudulently procured by this respondent confederating or combining with said parties or either or any of them, or with
260 any other person or persons whatsoever, either in order to defraud the petitioner (complainant's) claim to said sum, or for any other purpose whatsoever.

This respondent indignantly denies all the charges, allegations, and insinuations of fraud, connivance, and confederation charged, alleged, or

insinuated in said bill of complaint or petition, and demands of said complainant or petitioner to produce the proof upon which such charges are so recklessly made.

This respondent, further answering, denies that he has now or ever had the possession of said lands, or that he has the same rented out, (i. e., the lands involved in the litigation between Bolton and his representatives and Branch and the claimants under him so long pending in the courts of the State of Arkansas,) either in his undivided right, or as administrator of the estate of James H. Branch, or has any interest in said sum of money created by the decree of said court and referred to in the bill of complainants, (on petition,) except as a naked trustee appointed by the decree of said State court as a formal party to aid
261 in carrying into execution its judgment; and respondent states that the sole beneficiary interest in said sum of money vested by the decree of said circuit court of Desha County in Mrs. Mary E. Branch and her children, who are residents of the State of Alabama, and not within the jurisdiction of this court. That said property (lands described in proceedings) were the dwelling-house and curtilages of James H. Branch, deceased; and at his death remained in the possession of Mary E. Branch his widow, under the provisions of law, statutes of Arkansas, until her dower shall be assigned to her. That such dower has never been laid off or assigned, and this respondent never did, as such administrator, receive the possession of said land, but since the date of said decree she holds them as well under said decree as under the provisions of the administration statutes of Arkansas.

This respondent, further answering, denies that there is any design on his part, that when the debt Bolton's representatives to Mrs. Branch shall be fully paid off by the rents of said land, to surrender up
262 said lands to Seth W. Bolton, and to give them a clear acquittance against the said decree. That he has no knowledge of any such design, contrivance, or practice on the part of any of said parties, and he does not believe any such exist except in the imagination of complainant and his counsel.

This respondent further states that the only design he entertains is to conform strictly to the discharge of his trusteeship; that if the money shall be paid to him he will file a bill of interpleader and require the parties claiming it to litigate their respective claims, but until said sum of money is paid into his hands he disclaims all interest in the litigation concerning the matter or fund.

This respondent, for a further answer to said petition, (bill of complaint,) re-asserts and reiterates the defences set up by him in his answer heretofore filed in this court to the amended and supplemental cross-bill of James Bankhead, in the case of this respondent, as administrator of James H. Branch, deceased, against James Bankhead, surviving partner of McGregor, Alloway & Co., and asks that said
263 answer may be taken and considered as a part of this answer.

This respondent further demurs to said petition (bill of complaint) in this cause for the causes assigned as exceptions in said answer, and will insist upon the same at the hearing.

PINDALL,
*For Def't McNeill.*

UNITED STATES OF AMERICA,
*Eastern District of Arkansas:*

Hector McNeill, one of the defendants to the petition (bill of complaint) of James Bankhead, exhibited in said court, being duly sworn,

deposes and says, that the matters and things as stated in the annexed and foregoing answer to said petition as of his own knowledge are true in substance and in fact, and that the matters and things as therein stated upon information and belief he believes to be true.

H. McNEILL.

Subscribed and sworn to before me on this 2d day of June, 1871, at the eastern district aforesaid.

L. A. PINDALL.
*U. S. Com'r E. D. A.*

264 Filed June 13, 1871.

FRANK E. WRIGHT, *Clerk.*

Which replications are in the words and figures following, to wit:

The circuit court of the United States for the eastern district of Arkansas.

The replication of James Bankhead, complainant, to the answer of Seth W. Bolton and Daniel A. Williams, defendants.

This repliant, saving and reserving unto himself all and all manner of advantage, &c., for replication to the said answer saith, that he will aver and prove his said petition to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant, without this that any other matter or thing whatsoever in
265 the said answer contained, material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true. All which matter and things this repliant is and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and by his said petition he hath already prayed.

WEATHERFORD &
CLARK & WILLIAMS,
*For Compl't.*

Filed June 14, 1871.

FRANK E. WRIGHT, *Clerk.*

Circuit court of the United States for eastern district of Arkansas.

The replication of James Bankhead, complainant, to the answer of Hector McNeil, defendant.

This repliant, saving and reserving unto himself all and all man-
266 ner of advantage, &c., for replication to the said answer of said Hector McNeil saith that he will aver and prove his said petition to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant, Hector McNeil, is uncertain, untrue, and insufficient to be replied unto by this repliant, without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true. All which matters and things this repliant is and will be ready to aver and prove as this honorable court shall

direct, and humbly prays in and by his said petition he hath already prayed.

WEATHERFORD,
CLARK & WILLIAMS,
*For Complainant.*

Filed June 14, 1871.

FRANK E. WRIGHT, *Clerk.*

267 UNITED STATES OF AMERICA,
*Eastern District of Arkansas:*

Be it remembered that, at a circuit court of the United States of America in and for the eastern district of Arkansas, begun and holden on Monday, the 9th day of October, anno Domini one thousand eight hundred and seventy-one, at the United States court-room, in the city of Little Rock, Arkansas, the honorable John F. Dillon, judge of the circuit court of the United States for the 8th judicial circuit, presiding, & Hon. Henry C. Caldwell, district judge, and holding said court, the following proceedings were had, to wit:

And on October 13th, A. D. 1871, as follows:

JAMES BANKHEAD
*vs.*
HECTOR MCNEIL, SETH W. BOLTON, & DAVID A. WILLIAMS.

Comes the complainant, by Clark and Williams, his attorneys, and, on their motion, leave is granted them to correct the misnomer of William P. Clayton to James P. Clayton, receiver, which is accordingly done.

And on October 16th, A. D. 1871, as follows:

JAMES BANKHEAD
*vs.*
268 HECTOR MCNEIL, SETH W. BOLTON, & DAVID A. WILLIAMS.

Come the defendants, by Garland and Pindall, their solicitors, and file herein their motion to recall the order appointing a receiver and granting an injunction.

Which motion is in the words and figures following, to wit:

UNITED STATES OF AMERICA,
*Eastern District of Arkansas:*

In the circuit court.

JAMES BANKHEAD, COMP'T,
*vs.*
HECTOR MCNEIL, SETH W. BOLTON, & DAVID A. WILLIAMS.

Proceedings in equity.

Comes David A. Williams and Seth W. Bolton, two of defendants, and moves the court to recall the order appointing a receiver and grant-

ing an injunction made in vacation in the above cause, and to
269 modify the same, and to require the said complainant to make and file in this cause a good and sufficient bond, with securities to be approved by the court in such sum as the court may direct, conditioned to pay all damages which may be sustained by said defendants, or either of them, by reason of such appointment of receiver and injunction; and that said complainant shall be required to verify *their* said bill; and that the giving of said bond and said verification be made a condition-precedent to the appointment of said receiver and the issuance of said *receiver;* and that the injunction heretofore issued be

GARLAND, *For Defts.*

Filed October 16, 1871.

FRANK E. WRIGHT, *Clerk.*

And on October 23, A. D. 1871, as follows:

JAMES BANKHEAD
*vs.*
270 HECTOR MCNEIL, SETH W. BOLTON, & DAVID A. WILLIAMS.

Comes the complainant, by Clark and Williams, his solicitors, and come the defendants, by Garland and Pindall, their solicitors, and the motion to recall order appointing receiver and granting injunction is submitted to the court; and, by agreement of parties, it is ordered that the complainant give an injunction-bond in the sum of $8,000.00 on or before the 1st day of February next.

Which bond for an injunction is in the words and figures following, to wit:

Know all men by these presents that we, James P. Clayton, of Desha County, Arkansas, as principal, and L. W. Watson and Tho's Scott, as securities, are held and firmly bound unto the United States of America, in trust for whom it may concern, in the penal sum of ten thousand dollars; to the payment of which, well and truly to be made, we
271 bind ourselves, our heirs, executors, and administrators, firmly by these presents, sealed with our seals and dated this 15th day of November, 1871.

The condition of the above bond is that, whereas the above-bounden James P. Clayton was, by the circuit court of the United States for the eastern district of Arkansas, in a case pending in said court, wherein James Bankhead was complainant, and Seth W. Bolton, David A. Williams, and Hector McNeill, adm., were defendants, on the 14th day of June, 1871, appointed receiver in chancery in said cause:

Now, if the said James P. Clayton, as such receiver, shall faithfully account for and pay over all moneys which shall come to his hands or possession as such receiver, and otherwise faithfully perform all his duties as such receiver, then this bond to be void; otherwise to remain in full force.

JAS. P. CLAYTON. [SEAL.]
L. W. WATSON. [SEAL.]
THO'S SCOTT. [SEAL.]

direct, and humbly prays in and by his said petition he hath already prayed.

WEATHERFORD,
CLARK & WILLIAMS,
*For Complainant.*

Filed June 14, 1871.

FRANK E. WRIGHT, *Clerk.*

267 UNITED STATES OF AMERICA,
*Eastern District of Arkansas:*

Be it remembered that, at a circuit court of the United States of America in and for the eastern district of Arkansas, begun and holden on Monday, the 9th day of October, anno Domini one thousand eight hundred and seventy-one, at the United States court-room, in the city of Little Rock, Arkansas, the honorable John F. Dillon, judge of the circuit court of the United States for the 8th judicial circuit, presiding, & Hon. Henry C. Caldwell, district judge, and holding said court, the following proceedings were had, to wit:

And on October 13th, A. D. 1871, as follows:

JAMES BANKHEAD
*vs.*
HECTOR MCNEIL, SETH W. BOLTON, & DAVID A. WILLIAMS.

Comes the complainant, by Clark and Williams, his attorneys, and, on their motion, leave is granted them to correct the misnomer of William P. Clayton to James P. Clayton, receiver, which is accordingly done.

And on October 16th, A. D. 1871, as follows:

JAMES BANKHEAD
*vs.*
268 HECTOR MCNEIL, SETH W. BOLTON, & DAVID A. WILLIAMS.

Come the defendants, by Garland and Pindall, their solicitors, and file herein their motion to recall the order appointing a receiver and granting an injunction.

Which motion is in the words and figures following, to wit:

UNITED STATES OF AMERICA,
*Eastern District of Arkansas:*

In the circuit court.

JAMES BANKHEAD, COMP'T,
*vs.*
HECTOR MCNEIL, SETH W. BOLTON, & DAVID A. WILLIAMS.

Proceedings in equity.

Comes David A. Williams and Seth W. Bolton, two of defendants, and moves the court to recall the order appointing a receiver and grant-

ing an injunction made in vacation in the above cause, and to
269 modify the same, and to require the said complainant to make and file in this cause a good and sufficient bond, with securities to be approved by the court in such sum as the court may direct, conditioned to pay all damages which may be sustained by said defendants, or either of them, by reason of such appointment of receiver and injunction; and that said complainant shall be required to verify *their* said bill; and that the giving of said bond and said verification be made a condition-precedent to the appointment of said receiver and the issuance of said *receiver;* and that the injunction heretofore issued be

GARLAND, *For Defts.*

Filed October 16, 1871.

FRANK E. WRIGHT, *Clerk.*

And on October 23, A. D. 1871, as follows:

JAMES BANKHEAD
*vs.*
270 HECTOR MCNEIL, SETH W. BOLTON, & DAVID A. WILLIAMS.

Comes the complainant, by Clark and Williams, his solicitors, and come the defendants, by Garland and Pindall, their solicitors, and the motion to recall order appointing receiver and granting injunction is submitted to the court; and, by agreement of parties, it is ordered that the complainant give an injunction-bond in the sum of $8,000.00 on or before the 1st day of February next.

Which bond for an injunction is in the words and figures following, to wit:

Know all men by these presents that we, James P. Clayton, of Desha County, Arkansas, as principal, and L. W. Watson and Tho's Scott, as securities, are held and firmly bound unto the United States of America, in trust for whom it may concern, in the penal sum of ten thousand
dollars; to the payment of which, well and truly to be made, we
271 bind ourselves, our heirs, executors, and administrators, firmly by these presents, sealed with our seals and dated this 15th day of November, 1871.

The condition of the above bond is that, whereas the above-bounden James P. Clayton was, by the circuit court of the United States for the eastern district of Arkansas, in a case pending in said court, wherein James Bankhead was complainant, and Seth W. Bolton, David A. Williams, and Hector McNeill, adm., were defendants, on the 14th day of June, 1871, appointed receiver in chancery in said cause:

Now, if the said James P. Clayton, as such receiver, shall faithfully account for and pay over all moneys which shall come to his hands or possession as such receiver, and otherwise faithfully perform all his duties as such receiver, then this bond to be void; otherwise to remain in full force.

JAS. P. CLAYTON. [SEAL.]
L. W. WATSON. [SEAL.]
THO'S SCOTT. [SEAL.]

272 The sureties to the foregoing bond *is* good and sufficient.

CLARK & WILLIAMS.

Approved:

HENRY C. CALDWELL,
*Dist. Judge.*

Filed November 18, 1871.

FRANK E. WRIGHT, *Clerk.*

And on December 4, A. D. 1871, as follows:

JAMES BANKHEAD
*vs.*
HECTOR MCNEILL AS ADM., SETH W. BOLTON, & David A. Williams.

And now on this day this cause came on to be heard, upon the complainant's petition supplemental to the original proceedings and decree, exhibits thereto, answers of said defendants' exhibits thereto, and replications, and was argued by counsel. Whereupon it is ordered,
273 adjudged, and decreed, that unless the said defendants, or some of them, shall, on or before the 15th day of January next, after the date hereof, pay, or cause to be paid, to the complainant the said sum of three thousand six hundred and sixty-six dollars and sixty-six cents ($3,666.66,) together with the sum of three thousand four hundred and eighty-three dollars and thirty-two cents ($3,483.32) interest thereon, from the 10th day of January, 1854, making the sum of seven thousand one hundred and forty-nine dollars and ninety-eight cents, ($7,149.98,) being the sum due from the estate of said Isaac L. Bolton to the estate of James H. Branch, deceased, by reason of the rescinding of said contract for the purchase of said Belleville plantation, such sum to be credited on the original decree in this cause, together with interest on the said sum from this date, that the said plantation, known as the Belleville plantation, containing four hundred and forty-three acres of surveyed land and about five hundred acres of made lands, being the same lands on which the said James H. Branch resided in his life-time, and
274 cultivated at the date of said mortgage, to wit, the 16th day of September, 1854, be sold at public auction to the highest bidder at the door of the court-house for the county of Desha, in the town of Napoleon, in said county, between the hours prescribed by law for judicial sales on that day, for the purpose of satisfying the original decree in this cause, and James P. Clayton, heretofore appointed receiver herein, and qualified as such, be appointed as commissioner of this court, with instructions to proceed, as such receiver and commissioner, to sell the said lands accordingly, after having made due advertisement of such sale, according to the and custom of this court in such cases, to make titles to the purchaser or purchasers, and to hold the proceeds of such sale as such receiver, and report his proceedings to the next term of this court, to which term this cause is continued. And thereupon the said David A. Williams, Hector McNeill, and Seth W. Bolton, pray an appeal from the decision in this, and the cause to which this is
275 a supplement, and tender their bond with Lewis W. Watson, Stephen J. Peoples, and Franklin Malpass, as securities, to stay said decrees in all things, and said bond is by the court approved, and said appeal is granted, and said decrees are in all things stayed until

said causes are disposed of in the Supreme Court of the United States.

Which supersedeas bond is in the words and figures following, to wit:

UNITED STATES OF AMERICA,
*Eastern District of Arkansas:*

In the circuit court.

JAMES BANKHEAD, COMPL'T,
*vs.*
HECTOR MCNEILL, DAVID A. WILLIAMS, & SETH W. BOLTON, DEF'TS.

Know all men by these presents that we, David A. Williams and Seth W. Bolton, as principals, and Lewis W. Watson, Stephen
276 J. Peoples, and Franklin Malpass, securities, are held and firmly bound unto James Bankhead, the above-named complainant, in the sum of ten thousand ($10,000.00) dollars, to be paid to the said James Bankhead, his executors or administrators. To which payment well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents, sealed with our seals, and dated this November 24th, A. D. 1871.

Whereas the above-named Hector McNeill, David A. Williams, and Seth W. Bolton, have taken an appeal to the Supreme Court of the United States to reverse the decree rendered in the above-entitled (suit) cause by the circuit court of the United States within and for the eastern district of Arkansas, in chancery sitting:

Now, therefore, the condition of this obligation is such that if the above-named Hector McNeill, David A. Williams, and Seth W.
277 Bolton, shall prosecute their said appeal to affect, and answer all damages and costs if they shall fail to make good their plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

D. A. WILLIAMS.
S. W. BOLTON.
L. W. WATSON.
S. J. PEOPLES.
FRANKLIN MALPASS.

Sealed and delivered in presence of—

UNITED STATES OF AMERICA,
*Eastern District of Arkansas:*

We, Lewis W. Watson and S. J. Peoples, and each of us, do solemnly swear that we are solvent, and have property not exempt from execution, in the eastern district of Arkansas, over and above our liabilities, amounting to the sum of seven thousand dollars each.

L. W. WATSON.
S. J. PEOPLES.

278 Subscribed and sworn to before me, the undersigned U. S. commissioner for the eastern district of Arkansas, at Desha County, in said district, on this 25th day of October.

L. A. PINDALL,
*U. S. Com'r.*

We are satisfied with this bond, and agree that it may be approved by the court.

CLARK & WILLIAMS.

We agree that the appeal shall supersede all proceedings, including the operation of the injunction in supreme court.

CLARK & WILLIAMS.

The within bond approved.
Dec. 4, 1871.

HENRY C. CALDWELL,
*Dist. Judge.*

Filed Dec. 4, 1871.

FRANK E. WRIGHT, *Clerk.*

279 UNITED STATES OF AMERICA,
*Eastern District of Arkansas:*

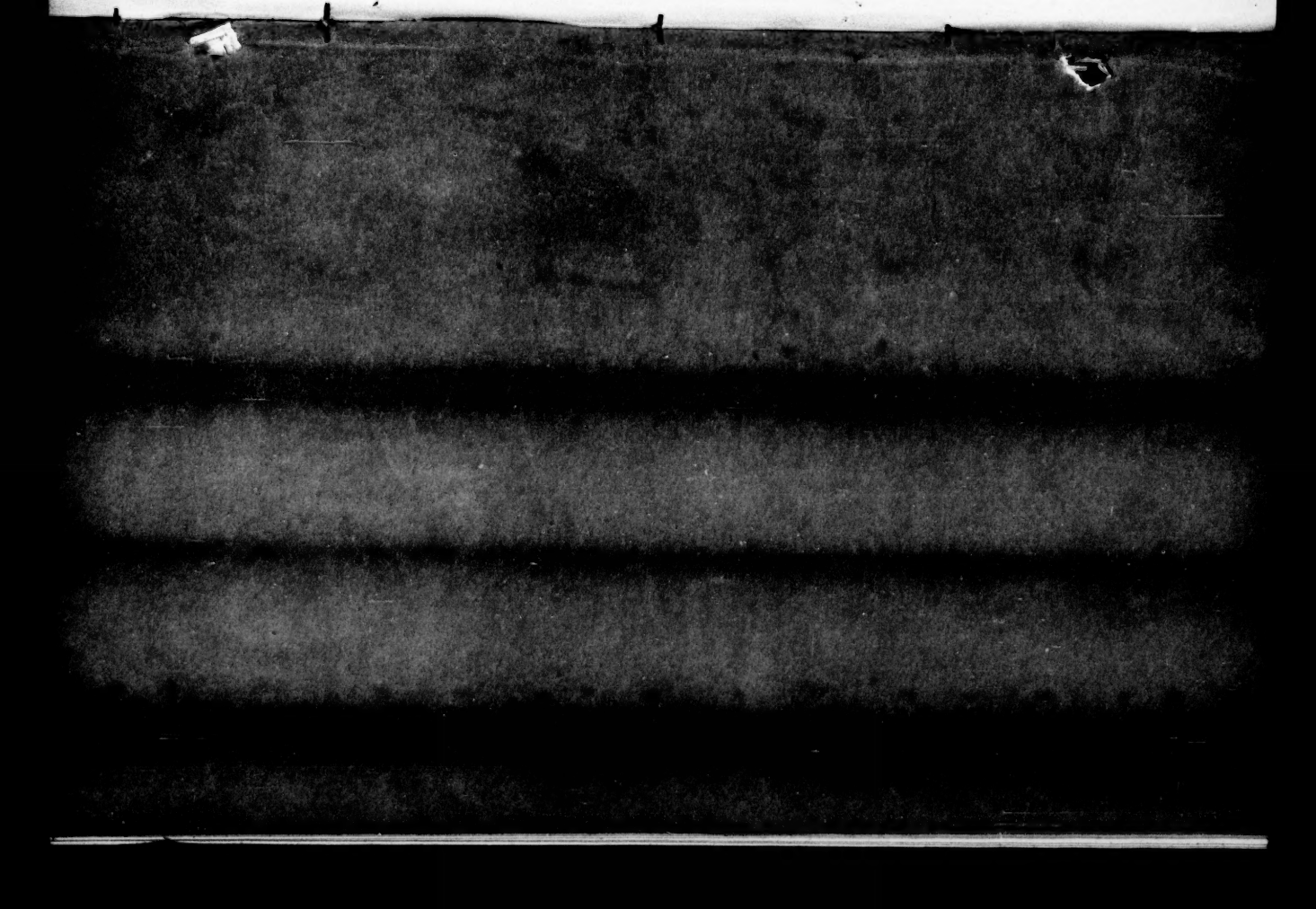
I, Frank E. Wright, clerk of the circuit court of the United States for the eastern district of Arkansas, in the eighth circuit, hereby certify that the foregoing writings annexed to this certificate are true, correct, and compared copies of their originals on file and remaining of record in my office, and constitute a complete transcript of the record of the case of James H. Branch against McGregor, Alloway & Co., in said court.

In witness whereof I have hereunto set my hand and the seal of said court this 15th day of October, in the year of our Lord one thousand eight hundred and seventy-two, and of the Independence of the United States of America the ninety-seventh.

Attest:
[SEAL.]

FRANK E. WRIGHT, *Clerk.*
By RALPH L. GOODRICH,
*Dep'ty Clerk.*

(Indorsed:) No. 232. David A. Williams, Hector McNeill, adm'r, &c., and Seth W. Bolton, appellants, vs. James Bankhead. E. Arkansas, C. C. U. S. Filed 4th November, 1872.



# Supreme Court of the United States.

OCTOBER TERM, 1873.

DAVID A. WILLIAMS, ET AL., *appellants*,
*vs.*
JAMES BANKHEAD, *appellee*. } No.

APPEAL FROM THE UNITED STATES CIRCUIT COURT FOR THE EASTERN DISTRICT OF ARKANSAS, IN EQUTIY.

## BRIEF FOR APPELLANTS.

For it is a matter of the worst example, that courts which distribute peace to subjects should practice duels amongst themselves.—*Bacon, Aph. xcvi.*

In January, 1854, James H. Branch bought a plantation from Isaac L. Bolton, in Desha county, Arkansas, and gave certain notes for the unpaid purchase money. Bolton brought suit in the Desha circuit court to enforce payment of these notes against the lands sold to Branch. Branch appeared to the suit, answered, and made his answer a cross-bill, setting up certain defects and apprehended defects of title, and asked the collection of the notes to be enjoined until a good title was made. In this suit between Branch and Bolton, begun in 1856, the firm of McGregor, Alloway & Co. were parties from the beginning to the ending of the case; and *James Bankhead*, the appellee, was of the firm of McGregor, Alloway & Co., and as to them was the chief moving spirit, as the record shows. (*Trans.* pp. 50–52, 57.)

On 16th September, 1854, James H. Branch gave to McGregor, Alloway & Co. a mortgage on this same land bought from Bolton and on certain slaves. The mortgage, as alleged and admitted, contained no sum of indebtedness, but was given to cover what then might be due and might accrue in future to McGregor, Alloway & Co., the commission merchants of James H. Branch.

At the April term 1859 of the court below, and long before the Branch and Bolton case was decided, McGregor, Alloway & Co. sued Branch in assumpsit on a debt of $20,886 86. In April, 1860, Branch filed his bill in equity, confessing his indebtedness to his merchants in the sum of $8,000 00, and submitted to a judgment for that sum, and got an injunction against the further prosecuting the suit against him at law. (*Trans.* p. 2, *et seq.*) Branch's bill in equity set up the mortgage of September, 1854, (*Trans.* p. 4,) and attacked the claim of McGregor, Alloway & Co. for usury, false charges, &c. Bankhead answered this bill on behalf of the firm, of which he was a member, on the 23d day of August, 1860, while the *Branch* and *Bolton suit, to which he* (Bankhead) *was a party, was still pending and undecided.* In his answer Bankhead admits the making the mortgage by Branch in September, 1854, to his commission merchants, and gives up the law-suit, and invokes the jurisdiction of equity to foreclose that mortgage for the full amount of their claim, $20,886 86. (*Trans.* pp. 21–23.

Except taking a decree *pro confesso* against McGregor & Alloway, filing exceptions to Bankhead's answer, and then replying to so much of it as was left on the record, nothing was done in the cause till the "*cruel war*" came and went.

In the meantime, the Branch and Bolton suit kept up its march, and in October, 1860, the Supreme Court of Arkansas reversed it, and decreed Bolton his money, and if Branch did not pay it, the contract of sale (January, 1854) be rescinded. (For convenience see the case in 22 Arks. Rep. 435–441.)

A period then of about five years ensued, when not only

the laws were silent, but also *the law*, and these two cases, in which Bankhead, representing McGregor, Alloway & Co., was a party, were sleeping, and there was none to disturb their repose; and at the end of this time, when called for, many of the parties were missing, and they had to be brought in through their representatives. The Branch and Bolton suit made better speed than the other; and in October, 1866, the mandate of the Supreme Court of Arkansas was filed and spread upon the record in the Desha circuit court; revivors had all in due form to progress to final hearing, (*Trans.* p. 57;) and the record shows Bankhead was there, as a prudent man, looking out for his interests. But not till six months after that did Bankhead move in this cause in the court below, when he suggested Branch's death, and continued the case till Branch's administrator could be brought in. (*Trans.* p. 40.) Afterwards, on the 7th of June, 1870, Bankhead filed several amendments and supplements, and cross-bills, and the case, having been revived, was set for hearing at the next term. (*Trans.* p. 41, *et seq.*) But before all this was done, in October, 1868, (nearly two years,) the Branch and Bolton case in the state court had been revived, issues made up, and the case finally heard and disposed of. The final decree in that case (*Trans.* pp. 68, 69) is as follows:

"Now, at this day comes the parties, by their respective solicitors, and the infant defendants, by J. M. Pinnell, esq'r., their guardian ad litem, and the said cause coming on to be heard on the bill in the nature of a bill of revivor filed herein, of*f* Seth W. Bolton, by leave of this court, and the exhibit thereto, to wit, the bill of the sea*d* Isaac L. Bolton, dec'd, and the transcript of the record and proceedings of said original cause in this court, as well as the mandatory decree and judgment of the supreme court of the State of Arkansas in said original *course;* the answer of Hector McNeil, as administrator of the estate of James H. Branch, dec'd; the answer of J. M. Pinnell, esq'r., as guardian ad litem of the infant heirs of said James H. Branch, dec'd; the answer and cross-bill of said Mary E. Branch, widow of said James H. Branch, dec'd, and the petition, answer, and cross-bill

of Wade H. Bolton; the depositions and proof in this *course* and the *course* is fully argued by their respective solicitors.

"And the court being fully advised of and concerning the premises, and of the judgment which ought to be rendered herein, doth order, adjudg', and decree that said cross-bill of said Wade H. Bolton be dismissed, without *projustice* to any rights he may have in the subject-matter of this suit.

"And it is further ordered, adjudged, and decreed that said Hector McNeil, as administrator of the estate of James H. Branch, dec'd, pay to said Seth W. Bolton, devisee of said Isaac L. Bolton, the amount of the two notes in the original bill and *perceedings* mentioned, together with the interest thereon, and the costs of said judgment of Wa'hington L. Bolton, on or before the 1st day of Jan'y, A. D. 1860, and reci've from the representatives of the estate of said Isaac L. Bolton, the deed to said lands tender'd in said original papers and proce'dings. And it is further ordered, adjudged, and decreed that if the said Hector McNeil shall fail to pay said sums of money within the time herein specified, then said contract entered into between said Isaac L. Bolton and said James H. Branch, on the 10th day of Jan'y, A. D. 1854, for the sale and purchase of the lands described in the original bill and proceedings in this couse be, and the same is hereby, res'ined; and that the said Seth W. Bolton, as devisee of said Isaac L. Bolton, dec'd, shall cause the estate of said James H. Branch to be rele*a*ved from the bond due on the 10th day of Jan'y, 1855, and surrender to the said Hector McNeil the bond due on the 10th day of Jan'y, 1856, and pay to the said Hector McNeil, as administrator of said James H. Branch, dec'd, the sum of $3,666.00 *dollars*, with six per cent. int'rest thereon from the said 10th day of Jan'y, 1854, until payment shall be made hereunder, for the use and benefit of said Mary E. Branch, widow of said James H. Branch, dec'd, who is in the possession of said lands, and is entitled to said sum of money by reason of the equities set up in her answer and cross-bill herein.

"And it is further order'd, adjudged, and decreed that when said sum of money, together with the int'rest thereon is fully paid to said Hector McNeil for the use and benefit of said Mary E. Branch aforesaid, that she shall im'ed*d'et*ly deliver and give up the posses'ion of said lands to the said Seth W. Bolton; provided, however, if said money is not

paid to said MeNeil to the use, &c., as aforesaid, on or before the 1st of Feb'y next, 1869, the said Mary E. Branch or her tenant in possession shall have the right to retain, gather, and remove any crop which may be planted or growing on said land at the time of such payment, and the said Mary E. Branch shall retain and have the possession of said lands until the full payment of said sum and interest to said Hector McNeil for her use and benefit."

These matters are all distinctly pleaded by Williams, McNeil, and Bolton against the recovery by Bankhead in this suit. And the further matter was relied upon by them that this record showed Mrs. Branch and the heirs of James H. Branch to be indispensable parties, and the cause should not progress without their being before the court, as the court could not make a decree final in the cause without them. Notwithstanding these objections, the court did decree in favor of Bankhead, and if the money should not be paid by a day certain, the land was to be sold, &c. (*Trans.* p. 84.) After the cause was reinstated in the court below, Bankhead, in some of the numerous pleadings he filed, relented of his original rash purpose to insist upon and demand $20,886 86, and came down gracefully to the $8,000 tendered by Branch, and rested it upon the Nashville mortgage of September, 1854, but this not until the slaves named in that mortgage, on account of circumstances over which neither he nor any party to this record had much control, had been released from that mortgage, and not until the State court had adjudicated the case there and disposed of the fund really in both courts. Before this decree (*Trans.* p. 84) was rendered, the court had decreed the $8,000 against McNeil, as administrator of Branch, with interest from the 16th day of April, 1860, and in that decree the proceedings of the Desha circuit court are noticed and upheld as to the amount decreed to McNeil against the administrator of Seth Bolton. (*Trans.* p. 56, *et seq.*)

Sufficient of this complex proceeding has been recited to inform and acquaint the court of the points involved, and

from a careful reading of the record, it will not require a very erudite legist to show wherein the court below erred, but the confusion in the two records thus brought to the attention of the court, and a hearing on them had in the great press and hurry of business on the circuit, will relieve somewhat against the surprise at the unfortunate ruling of the court below.

ERRORS ASSIGNED.

Williams, McNeil, and Seth W. Bolton appealed from the decree below, and present three grounds for reversal, being a portion of the same relied on by McNeil in his answer to Bankhead's amended and supplemental bill to a cross-bill, and which were continued and urged throughout the cause. (*Trans.* p. 51.)

1st. The court had no jurisdiction over the subject-matter of the suit, as the whole question and rights of parties had been already heard and settled by a decree in the State court, in nowise annulled, reversed, or even appealed from.

2d. Mrs. Branch and the heirs of James H. Branch were indispensable parties to this suit, and no action could be had in it till they were brought in.

3d. The cross-bill of Bankhead was erroneously entertained, as it made new parties to the cause.

It is certain that the whole subject-matter of this entire litigation was the lands or plantation of James H. Branch. In this case Bankhead had, as before shown, rested upon his mortgage of September, 1854, and asked foreclosure on that. Already there was a proceeding directly against these same lands, in which proceeding Bankhead was a party from the beginning. Both cases were then, in short, proceedings *in rem*. There were two jurisdictions holding, or attempting to hold, and dispose of these lands as a fund in court. The familiar principle of law is, even in matters of concurrent jurisdiction, the court first getting possession of the controversy or of the property in dispute

must be allowed to dispose of it finally, and the proceedings of that court are as binding as if its jurisdiction had been exclusive.

*Ex parte Robinson*, 6 *McLean*, 355.
*Wood* v. *Mann*, 1 *Sumner C. C.* 578.
*Buck* v. *Colbath*, 3 *Wall.* 334.
*Freeman* v. *How*, 24 *How.* 450.
*Taylor* v. *Carryl*, 20 *How.* 583.
*Hagan* v. *Lucas*, 10 *Peters*, 400.
*Smith* v. *McIver*, 9 *Wheat.* 532.
*Abbott* v. *Sample*, 25 *Ill.* 107.
*Riggs* v. *Johnson County*, 6 *Wall.* 166.

Taylor vs. Taylor. 16 Wall. 371

There is not a rule of law more exacting than this, nor is there one the courts are more uniformly particular in adhering to and in enforcing.

*Ruggles* v. *Limarton*, (*C. Ct. W. Dist. Wis.*) 1 *Bissell.*
*How* v. *Kane*, 2 *Chand.* (*Wis.*) 222.
*Newman Pls. & Pr.* 485, *note* 4.

In a recent case in the United States circuit court for the eastern district of Wisconsin, Judge *Miller* sustained the position here contended for by appellants, where an attempt was made, as Bankhead ventured upon in this case, to step behind the adjudication of a State court and adjust and settle rights differently that had been already determined in that court, and in that case that eminent judge said: "The original judgment or decree of a court having jurisdiction cannot be disturbed in a co-ordinate tribunal, nor in a collateral action. The decree of a State court, having jurisdiction of a suit and of the parties to it, is *conclusive* of the matters determined, and cannot be impeached in the courts of the United States nor of another State. The circuit courts of the United States are not constituted to review and reverse the proceedings and judgments of State courts. It is the duty of such courts to give full faith and credit to the judicial proceedings and

records of State tribunals." (*Amory* v. *Amory*, *Am. L. R. January*, 1873, *p.* 38.)

How applicable is all this to the present case? No one controverts the Desha circuit court had jurisdiction of the matter in dispute and the parties, and was in possession of the subject-matter in controversy four years at least before the court below had the parties at all before it. Bankhead was before the Desha circuit court all the time, and he cannot escape now by saying he did not know of the deaths of parties, the abatements, and revivors. One or two things he did know, and that is, he *still lived;* no abatement or revivor had been taken on his account; and as he was in the court, he was bound in law to stay there, and to know all that was done in the suit till the end of the suit, to take his chances and submit like a man to the decree or judgment of the court. He will not be permitted to be in or out of the court to suit his convenience. If any error occurred of which he could complain, he had his remedy by appeal to the supreme court of the State, but not by a bill of review in the United States court. Here was Branch's lands—his entire estate—in litigation, and Branch's heirs and widow had nothing but what their interest might be in these lands—nothing upon earth, and these parties, with appellee and Bolton, the original creditor, were all before the Desha court, where this litigation was pending and decree rendered. If this is not final and conclusive in any and all other courts, subject to the right of appeal, then the laws, and the *law* too, had better be silent now. In the case cited (Amory *v.* Amory) the court goes on to show that by appeal, or by a direct proceeding in the court having the case originally, for fraud, error, &c., the case might be reviewed, but not by a proceeding in the United States court; and a great many authorities are referred to, which it is needless to cite here.

When these matters were brought before the court below, as they were repeatedly and very affirmatively—so plainly so that the court did, curiously enough, recognize one part of the decree in the State court and repudiate the

balance—the suit should have been abated and the parties remitted to the State court. This all the authorities unite in asserting. In no other way can the conflict between the federal and State courts, so much to be feared and deprecated, be avoided oftentimes. And this contest, as to jurisdiction, is one at all times and in all countries, where law is known and practiced as a profession, and dealt with by courts as a science, has been and is discountenanced. "*That courts should struggle and contest about jurisdiction is human frailty; quod boni et strenui sit judicis, ampliare jurisdictionem curiæ—this intemperance is plainly encouraged, and a spur given where there is need of a bridle.* But that, out of this contention of spirits, courts should readily rescind judgments awarded on one side and the other is an intolerable evil, plainly to be punished by kings, or senate, or the state." Wherefore it would have been well, and in fact better, for the court below not to have "*practiced a duel*" with the Desha circuit court about jurisdiction, but to have retired from the field, and left that court to dispose of this matter, so long held by it, as it saw fit, and left untouched its decision when made:

2. That Mrs. Branch and the heirs of James H. Branch were indispensable parties in this proceeding there can be no kind of doubt. The record shows, as before said, Branch had no other estate, and they were helpless without their interest in these lands; and this proceeding, all of it, was to subject these lands to the payment of debts claimed to be liens upon the lands. Bankhead's proceeding is on a mortgage direct, while Bolton's was on what is considered, in legal effect, in Arkansas, but a mortgage. (13 *Ark.*, 534; 16 *Ib.*, 126; 14 *Ib.*, 633.) Then we have two proceedings here to enforce mortgages, the mortgagor being dead! If his widow and heirs are not indispensable parties, then who are, and what is meant by indispensable? If the proposition itself did not carry conviction of its truth, the question has been ruled countless times in this country. (25 *Ark.*, 498; 6 *Ib.*, 269; 5 *Ala.*, 158; 1 *Ib.*,

708; 5 *Litt. Select Cases*, 48; 7 *J. J. Marsh.*, 376; 6 *McLean*, 416.

For the court below to have proceeded in this case at all, after the record in the State court was pleaded, was a severe undertaking; but to proceed in the case in the face of the decree in the State court, fixing Mrs. Branch's rights, and in a matter involving her all, and that of the children of James H. Branch, and disposing of those matters, too, adversely to the interests of the widow and heirs, without making them parties, was a work of such proportions, that the law is not able to support it.

3. That the cross-bill of Bankhead is a "*new departure*" entirely, both as to parties and subject-matter, there is no question, and the exception to it should have been sustained on that ground. This court has expressly said new parties cannot be made by a cross-bill, as Bankhead attempted to do here. (*Shields* v. *Barrow*, 17 *How.*, 145.) This case rules out altogether the cross-bill of Bankhead; and indeed the attempt made in this pleading has has no friends anywhere among the authors recognised in the profession. (*Story Eq. Pl.*, § 389; 3 *Dan. Ch. Pr.*, 1742.)

It is respectfully submitted, this case must be reversed; and if there is cause to complain of hardships, it will not be upon appellants, as the rights held and represented by them were adjudicated in a court of competent jurisdiction, in which Bankhead was a party, and of which he had notice; and if he had been content to contest them there, and not to take so many chances, much cost, delay, and great vexation would have been saved, not only to himself, but to many others. Appellants and others should not be delayed or prejudiced on account of Bankhead's vanity to figure in two suits and two courts, when one would have done as well.

GARLAND,
*For Appellants.*

IN THE

# Supreme Court of the United States.

## NO. 232.

DANIEL A. WILLIAMS, HECTOR McNEILL and SETH W. BOLTON, Appellants,

*vs.*

JAMES BANKHEAD.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF ARKANSAS.

## APPELLEE'S BRIEF.

From the year 1839 to 1853 James H. Branch, the plaintiff in the original bill, was a cotton planter in the county of Desha, Ark., and worked the plantation known as the Belleville Plantation, which he purchased in the former year, of Isaac L. Bolten, now deceased. During the same time McGregor, Alloway & Co., were Commission Merchants in New Orleans with a branch house at Nashville, Tenn., doing business under the firm name of N. E. Alloway & Co.

During these years McGregor, Alloway & Co. acted as Commission Merchants for Branch, receiving and selling his cotton

and furnishing him supplies and means to purchase and open his lands and run his plantation. After the crop of 1857 Branch refused to ship them his cotton any longer, and McGregor, Alloway & Co., claiming a balance on statement of accounts of $20,886 86, brought their suit thereon on the law side of the court to the April term, 1859. Branch, not appearing to the suit of law, but resorting to equity for his defence, filed his bill on the equity side of the court to the April term, 1860, wherein admitting generally the allegations in regard to the dealings between the parties and denying any statement of accounts between them, claimed that the accounts were still open for settlement from the beginning, and that upon a fair settlement there was no such balance due them; that such balance sued upon was made up, in a large part, of items for interest on unpaid balances, at eight per cent., when it should only have been at the rate of five per cent., and for items of two and a half per cent. commission upon advances, and the same on acceptances—these charges accumulating through the whole series of four years; that such items of debt were false and fraudulent, because no agreement had been made therefor, and that upon a restatement of the account, leaving out these items, the balance would be greatly reduced; that he, in fact, did not owe them more than eight thousand dollars, and that such would appear by a restatement of the accounts. He admitted that he justly owed them eight thousand dollars, and was willing to pay that amount, and alleged that on the 16th day of September, 1854, he executed to them a mortgage, in due form of law, upon this Belleville Plantation in Desha county to secure them in what he might then or afterwards be owing them, and he expressly stated and charged that although the said mortgage specified no sum, as of course it would not, depending upon future dealings, he was willing to stand to it and leave it still a security to the defendants therein to enforce the payment of whatever sum he might be found owing them, and fully admitted that they (McGregor, Alloway & Co.) then held the said mortgage, if they wished to insist upon it, in no way satisfied. The mort-

gage was exhibited with the bill. Prayer that the defendants might be compelled by decree of the court to take and submit to a judgment for said eight thousand dollars, which he consented might be entered against him; that they might be compelled to produce the said original mortgage in court and answer whether they would then or ever afterwards insist on carrying the mortgage into effect, and if they renounced all claims under the mortgage, that the same might be cancelled; that the accounts might be submitted to a master for restatement; that the suit at law might be enjoined and the defendants compelled to submit to the jurisdiction of this court alone, and litigate their claim here and nowhere else. An injunction bond, with Joseph Branch as security was filed, and the suit at law enjoined.

On the 23d of August, 1860, James Bankhead, the appellee, filed his answer and cross-bill, alleging that McGregor, having retired from the firm since the commencement of the suit at law, and the defendant Alloway having long since sold his entire interest to him (the respondent), he was the only party interested, and having performed all, or most of the transactions with the said Branch, he was fully competent to answer all the matters in controversy. He denied that the charges of eight per cent. interest on cash balances, and charges for two and a half per cent. for acceptances and for advances, or either, or any of them, were either fraudulent or unauthorized, and alleged that such charges were made in accordance with an agreement made with Branch at the time they commenced their dealings with him, and exhibits the letters of Branch acknowledging such agreement. (*Transcript, page* 24). He exhibits a statement of the accounts through the whole period, and alleges what the account shows, that at the end of each commercial year a statement of the account was presented to Branch, showing the dealings for the year, and the cash balance due by him, and to close up which Branch drew his draft on the house in New Orleans generally in favor of the house at Nashville, at ten or twelve months (a time sufficient to enable Branch

to get his cotton to market to meet it), which was accepted by the house, negotiated on the credit of the house and Branch credited with the proceeds; that when due the house took up the draft, charged the same to Branch, credited him with his cotton and other amounts received from him and carried the balance forward into the next year's account. That such balance, rendered at the close of each commercial year, embraced all dealings except standing acceptances not yet matured, which when subsequently taken up and paid by the house come into the next year's account; that at the close of the commercial year, 1856, to-wit, on the 28th of May, 1857, they rendered their account current for that year, showing cash balance of $5,144 62; that this account current was examined by Branch, agreed to, and Branch, in order to provide means for the payment of it, drew a draft on McGregor, Alloway & Co. in favor of N. E. Alloway & Co., payable in ten months from date, for the sum of $5,572 32, which was endorsed by N. E. Alloway & Co., and negotiated to the banks in Nashville and the proceeds, $5,144 61, put to his credit, which was all done pursuant to the original agreement, and the bill was given and received as a closing up of cash balance and was a full recognition of his account and all the items for two and a half per cent. commissions on advances and acceptances and for eight per cent. interest, and they deny his right to go behind that settlement or to open the accounts, notwithstanding all the business was transacted under the same agreement, and the account was continued from that time in precisely the same manner; that from that date the account was a new one and they continued to furnish him supplies and accept his drafts during the year 1857-8, and rendered his account current May 22d, 1858, which is exhibited. (*See Transcript, parge* 36). That this account commenced from the 9th of June, 1857, and was made up of cash paid upon their acceptances which were running to maturity at the time of the settlement, May 28th, 1857, and other checks and drafts drawn and paid during the year, and invoices of goods furnished, with interest on cash balances and commissions for advances and acceptances as agreed

upon, and the credits were made up of proceeds of cotton shipped and cash from N. E. Alloway & Co. That that account left a cash balance against Branch of $10,047 59. That this account closed all further transactions between the parties; at least no more cotton was shipped and no more bills drawn, except two, as hereinafter stated.

The substance of the defendant's further answer and cross-bill is that the sum of $20,886 86, for which the suit at law was brought, was made up of this cash balance of $10,047 59, and their acceptances of three time bills of $3,000 each, which were then outstanding and running to maturity, and two other bills, which had been drawn and accepted, one for $2,000 and the other for $3,000, but which had not been negotiated, but which were afterwards negotiated and put to his credit, and which reduced the said cash balance on the 18th of September in that year to $5,554 37, but all of which drafts when matured must be and were met and taken up by McGregor, Alloway & Co., (Branch furnishing no means whatever to do so) amounting to the sum of $14,249 35, which, with the said cash balance of $5,554 37 and the interest and commissions as aforesaid constitute the said sum sued for. (*See Exhibit, page* 38). On claiming that this whole sum was honestly due, and submitting himself to the jurisdiction of the court, he demands a decree for the same, and for the foreclosure of the said mortgage and sale of Branch's interest in the Belleville Plantation, to satisfy the same.

In April, 1861, the death of McGregor was suggested, and the cause ordered to proceed in the name of the remaining defendants, and Branch entered his replication to answer and the cause was continued, with leave to take depositions.

The war then come on, the court was closed and no further proceedings were had until the 28th of July, 1866, when the cause was redocketed on the motion of appellee, Bankhead.

At the April term, 1867, the death of Branch was suggested, and at the April term, 1870, the original and cross-causes

were revived in the name of his administrator, Hector McNeill, and set for hearing at the next term. (*Transcript*, 39, 40.)

At the same term, however, in July, Bankhead presented and filed an amended and supplemental cross-bill, in which he makes two new defendants, Seth W. Bolton and David A. Williams, and process was issued and duly served upon them, returnable in September. (*Transcript*, 42).

To this amended and supplemental cross-bill McNeill, as administrator, filed his answer. (*Transcript*, 50). The substance of the case made by those pleadings, and the exhibits thereto, so far as alleged, and not controverted, is as follows:

That Branch, previous to the execution of the mortgage to McGregor, Alloway & Co. on the Belleville Plantation, on the 10th day of January, 1854, purchased that place of Isaac L. Bolton, for the sum of $11,000, $3,666 66 of which he paid down (but which was paid, in fact, with moneys borrowed for that purpose from McGregor, Alloway & Co.,) and executed to Bolton his two bonds or sealed notes for the balance, for the $3,666 66 each, due in one and two years, and Bolton executed to him a bond for title.

That the first bond falling due, and remaining unpaid, Bolton assigned it to Washington L. Bolton, who obtained judgment on it in the Desha Circuit Court against Branch. That in March, 1856, after the second bond was due and unpaid, Bolton filed in the Desha Circuit Court his bill, in the nature of a bill for specific performance, alleging the non-payment of the said bond, his lien thereon for the purchase money and demanding a decree for payment of the money and a sale of the lands in default of the payment of said decree. That to such bill Branch filed his answer and cross-bill, alleging that no deed had been tendered him previous to the commencement of the suit, according to the terms of his title bond, and alleging, moreover, various reasons why he could not make title according to said agreement, and offering to rescind the contract, deliver up the bond to be cancelled and receive back the moneys already paid by him. That upon the hearing the

Desha Court dismissed the case, and Bolton appealed to the Supreme Court and that Court, at its October term, 1860, (22 *Ark. R.*, 435) reversed the decree, holding that the Desha Circuit Court ought to have required Branch to pay the amount due upon the two bonds, including interest to that time, and costs incurred upon the judgment of Washington Bolton, and to accept Bolton's deed, and remanded the case with instructions that Branch should pay the money and receive the deed accordingly, or that if he should not do so within a time specified by the court, that the contract of sale be rescinded; that Branch give up the lands to Bolton; that Bolton cause Branch to be released from the judgment of Washington Bolton and the bond first due; surrender to him the bond last due, *and pay to him the amount he paid upon the land, with interest from the time of payment*, and that there be no account of rents and improvements between the parties. Each party to pay half the costs in that court and the court below, and this to be the end of the whole controversy touching the lands.

That the war coming on, the mandate of the Supreme Court was not filed in the Desha Court until its fall term, 186, when the same was filed, and the deaths of Isaac L. Bolton and James H. Branch suggested, and the case, on the part of Bolton was revived by and in the name of Francis M. Cash, as administrator, and said Seth W. Bolton, as the son and devisee of said Isaac L.; and on the part of Branch, in the name of Mary E. Branch, his widow (but who had been married to Branch subsequent to the execution of the mortgage to McGregor, Alloway & Co.), and his children, heirs at law.

At the fall term, 1868, the respondent, McNeil, having obtained letters of administration on Branch's estate, filed same and was made a party upon his own application. At this term all the parties representing Branch—Hector McNeil, as administrator, Mary E. Branch, widow, and the children, put in their answers to Bolton's petition for a revival—all parties plaintiffs and defendants to the renewed suit being represented

by the attorney Pindall or Pindall & Randolph. The administrator admitted the inability of the estate to pay the two bonds due, and asked that the alternative order of the Supreme Court might be executed, and the money ($3,666 66-100), with the interest paid over by the said F. M. Cash, as administrator of Isaac L. Bolton, to him as the administrator of the estate of said Branch. The widow alleging that she was in possession of the lands, made her answer a cross bill, and set up a claim to said money, *when received by McNeil, as administrator*, under and by virtue of a deed of marriage settlement made between her husband, herself and Joseph Branch, bearing date the ——— day of August, 1864, whereby James H. Branch, in consideration of the marriage and of issue born thereof, James, Joseph, Percy and Susan, infants; and that she had brought into the marriage property of the value of several thousand dollars, and was entitled to other personal property of the value of $30,000 as the heir and distributee of the estate of her deceased father, Paul J. Watkins, late of the county of Lawrence, in the State of Alabama, had given, granted and confirmed unto the said Joseph Branch the sum of $30,000, to be paid to him by the heirs, executors and administrators of the grantor in the manner and at the times therein specified, and to be by him held and appropriated for and upon certain trusts created thereby, and to secure the same, and the interest to accrue thereon, *he declared that the same should be and remain a charge upon his entire estate, both real and personal*, including as well that which should be thereafter acquired as that already in possession, and that the same should be satisfied and paid in preference to all other charges of whatever nature, but should not interfere with his (the grantor's) right to sell or exchange any property possessed by him free from incumbrance on account thereof, but the proceeds of such sales, or the property acquired by such exchange, should stand in the place thereof and be subject to such charge. The said $30,000, however, was only to be paid, or to bear interest upon the contingency that the said Branch and wife should cease to live together as

husband and wife, or he should fail properly to provide for and maintain her and her children by him, but when such contingency happened by his death or failure to provide, then the $30,000 to commence to draw interest at 6 per cent. per annum, to be annually paid to said Joseph Branch, and to be by him applied to the support and maintenance of said widow and children, etc., and the widow, in consideration of the promises, transferred to the husband her distributive share in her deceased father's estate, and relinquished her right and claim to dower in all the property, real or personal, which he then had or might afterwards acquire. By virtue of which married settlement she prayed that a trust might be decreed to exist in her favor in said sum of money, and the same secured to her. The deed of marriage settlement was exhibited. *See Transcript, p.* 46.

That such marriage settlement was never recorded or acknowledged, except as appears on the face of the exhibit. That said Mary E. Branch was insolvent, and moneys paid to her could not be recovered back. That the estate of James H. Branch was insolvent. That the lands were, in 1869, in the possession of said David A. Williams, and that he was cultivating it the present year (1870). That said McNeill, administrator, made no opposition to the claims of said Mary E. Branch in the Desha Circuit Court. That the case in that court being submitted, the court, among other things, decreed that said Hector McNeill, as such administrator, shall pay to Seth W. Bolton, devisee of Isaac L. Bolton, the amount of the two notes in the original bill mentioned with interest and costs of the suit of Washington L. Bolton, on or before the first day of January, 1869, and receive from the representatives of the estate of Isaac L. Bolton the deed to said lands, tendered in the said original papers and proceedings, or, failing so to do, that said contract between Isaac L. Bolton and James H. Branch, for the purchase of said lands (the Belleville place), made January 10th, 1854, in the original bill mentioned should be rescinded, and that said Francis M. Cash, as administrator,

and Seth W. Bolton, devisee of Isaac L. Bolton, should cause the estate of James H. Branch to be released from the bond due the 10th January, 1855, and surrender to said McNeill, as administrator of his estate, the bond due 10th January, 1856, *and pay to the said Hector McNeill, as such administrator, the said sum of* $3,666 66-100, *with six per cent interest thereon from the said 10th day of January, 1854, until the payment thereof should be made for the use and benefit of Mary E Branch, widow of said Branch, deceased,* who was in possession of the lands and entitled to said sum of money by reason of the equities set up in her answer and cross bill therein; and that when the said sum of money with the interest should be fully paid to said McNeil for the use and benefit of said Mary E. Branch, that she should immediately deliver and give up possession of said land to said Seth W. Bolton; provided, however, that in case the said money should not be paid by the time aforesaid for the use aforesaid, she, the said Mary E., should have the right to gather and remove any crop which might be growing on said land at the time of payment, and that she should retain and have the possession of said lands until the full payment of said sum of money, and interest, to said Hector McNeill for her use and benefit. That said McNeill did not on or before the first day of January, 1869, nor at any other time, pay off the two bonds given for the purchase money, and receive the deeds to the lands whereby the decree of the Desha court rescinding the contract of purchase, and for refunding to McNeill, as administrator, the $3,666 66-100 had become absolute.

Upon this state of facts, and Bankhead consenting to take a decree for the $8,000, admitted to be due by said Branch in his original bill, with interest, the court below decreed that sum to be paid to him by said Hector McNeill, as administrator of said James H. Branch, deceased, with interest on the same at five per cent. per annum from the filing of the original bill, to-wit, the 16th day of April, 1860; and further decreed the said McNeill upon the receipt of the said sum of $3,666 66-100 and the interest thereon decreed by the Circuit Court of Desha

county, to be paid to him by said F. M. Cash, administrator, and Seth W. Bolton, as devisee of said Isaac L. Bolton, deceased, or any part thereof, to pay the same over to complainant, Bankhead, to be received by him in part payment of the decree, and further decreed that said Bankhead should have leave thereafter to institute such further proceedings in the cause against the representatives of Isaac L. Bolton, or others in possession of said lands, as should enable him to obtain the benefit of his decree against them, and that McNeil should pay the costs of this suit, and the suit at law referred to in the original bill (*Transcript, p.* 56).

From this decree the defendant, McNeill, prayed an appeal to this court, which was allowed (*Transcript, p.* 57).

It was, however, further alleged in the pleadings previous to the decree by McNeill and denied by Bankhead, that McGregor, Alloway & Co., were parties to the original proceedings by Isaac L. Bolton, in the Desha court.

There is no evidence whatever in the record to show that they were such parties, but according to the view we take of it we have no occasion to deny, and shall not pretend to deny, that they were made parties to the original proceedings therein, but it is not pretended that Bankhead had any notice of the revival of the suit in that court after filing the mandate of the Supreme Court. Nor did he have any notice whatever of Mrs. Mary E. Branch's cross bill, wherein she set up a claim to the money refunded on rescinding the contract for the purchase of the land, which was entirely new matter, not involved in the proceedings up to that time, and which no party but Bankhead had any interest to oppose; nor was Bankhead even made a party to such cross bill; nor did she in such cross bill demand or obtain any decree of that court as against Bankhead's mortgage, or touching its priority of lien upon that money.

One other matter needs to be here noted. McNeil, at the time of filing his answer to Bankhead's supplementary and amended cross bill, filed also exceptions thereto, which exceptions were argued and submitted, and which were at first sus-

tained by the court, and the amended cross bill ordered to be stricken from the files (*Transcript, p. 55*). *But this order was afterward rescinded and the exceptions overruled, the order rescinding the former order, however, was by mistake omitted to be entered of record.* This is a defect in the record which we might have corrected by certiorari. We have not done so, however, regarding the defect as rendered immaterial by the subsequent proceeding of the court in hearing and rendering a decree on the pleading so stricken from the files. If the court, however, consider the want of such rescinding order as invalidating the decree, we desire an opportunity to have the record perfected.

After the decree was rendered, and in pursurance of its provisions, Bankhead filed his petition, stating among other things, that there was danger that his decree would be rendered ineffectual to him by the said Cash & Bolton failing to pay over the said money to McNeil. That he believed there was a design and confederacy by and between said McNeil, Bolton, Cash and Mary E. Branch and others, not known, to defraud him out of the said sum of money by procuring the same to be paid over to said Mary E., widow, upon a pretended claim set up by her, but which was wholly fraudulent and void as against his right thereto. That the decree of the Circuit Court of Desha county, so far as it required McNeil to hold the money in trust for and to pay the same over to her, was fraudulently procured by the persons so confederated in order to defeat his claim thereto, he not being a party to such proceedings, and said court having no means of knowing or considering his right thereto. That he was informed and believed that McNeil or other of the confederate parties had possession of the land, so mortgaged to petitioner, and had the same rented out from year to year and were permitting said Mary E. to draw the rents therefrom in payment of the said sum so decreed to be paid to McNeil for her use, and that it was their design when the said debt should be fully paid off by such rents to surrender the lands up to said Seth W. Bolton, and to give them a

clear acquittance against the said decree. That he believed that by means of such fraudulent contrivances and practices he would lose the benefit of his decree, and be wholly unable to obtain said money unless he could obtain a decree against the said Seth W. Bolton, who was the real party in interest requiring him to pay the said money into this court, or for the possession or the rents of said lands, or both. That said lands were then in the possession of said David A. Williams as tenant of said McNeil, or some other of said parties, and that said Mary E. was not nor was said Cash a resident of the State of Arkansas, but that said Seth W. Bolton was a resident. Prayer that Bolton and Williams be made parties. That Bolton be required to show cause why he should not be decreed to pay the money into this court, or to petitioner; for receiver to take possession of the lands, or receive rents, and for injunction restraining Bolton from paying the money to any one except McNeil, or into this court, and the tenants from paying rents to any one except the receiver.

Bolton and Williams answered the petition jointly, and McNeil separately. They deny all conspiracy to defraud the petitioner, and all fraud in procuring the decree of the Desha Circuit Court. They deny that Bankhead was not a party, or had no means of knowing of such proceedings; admit that Williams and Bolton had possession of the lands and claimed the same as their own. Deny that Mary E. was drawing the rents, or that any of the defendants designed to pay off said sum by the rents, or to give Bolton a clear acquittance against said decree when such rents should amount to such sum. That at the time the said suit in the Desha court was revived Mrs. Mary E. Branch filed her cross bill *claiming said funds by reason of a resulting trust claimed from some equities set up in said cross bill*, and insist that said Bankhead ought to have used the same vigilance if he ————————to or relied upon any equities, claims or rights to said fund. That after the rendition of the decree establishing the beneficiary right in her to the money, and giving her the possession of the lands until the

same should be paid to her, defendant Williams rented the lands of her for the years 1869 and 1870, and cultivated the lands during those years, paying her the rent. That Bolton, being embarrassed in his finances, and unable to pay her the sum so decreed to her, he and the said Williams, in the spring of 1870, entered into an agreement for the sale of one-half the lands to Williams, in part consideration whereof Williams was to pay off the claim of Mrs. Branch, and by which agreement if the same had been executed he (Bolton) would have got the use of one-half the lands that year, but before the agreement was carried into effect, about the month of April or May, 1870, they heard of the claims of said Bankhead, and that he, (Bankhead) was about to commence proceedings in this court to enforce his claim, and learning also that the respective rights of the parties would be determined at the October term, the agreement was postponed and payment to Mrs. Branch withheld, with the view of Williams paying the money to whichever party should be successful in establishing his claim.

That said Bankhead did, about the 7th of June, file his amended and supplemental cross-bill in this court, setting up a claim to said money, and said Hector McNeil was made a party, who filed his exceptions and answer thereto, and the question of Bankhead's right to this fund was submitted to this court, and argued and decided adversely to him, and such exceptions were by a proper order and decree of this court sustained, and such supplemental and amended cross-bill and the pretended claim of said Bankhead were stricken from the files of this court.

That, *believing* that this disposition of the matter was final and that Bankhead's claim was finally disposed of by that decree, they, Bolton and Williams, executed their said agreement (a copy of which is exhibited), and the said Willliams made a contract with Mrs. Branch to pay her the full sum of $3,666 66, with interest at six per cent. from the date of said original payment of the same to that time, and paid her down at that time, to-wit, the 23d day of November, 1870, $2,000, and his draft on

his commission merchant for $2,000 more, payable March 1st, 1871, and his negotiable promissory note for some $3,200, payable 1st of January, 1872. That such payment was made in execution of the said agreement with Bolton for one-half of the lands, and under the decree of the Desha Circuit Court, and was openly and finally consummated after this Court had refused to disturb the decree of the State Court.

Bankhead filed his replications to the answers (*Transcript, page* 81), and on the 14th of June, 1871, *Transcript, page* 74), the court, on examination of the whole case, appointed a Receiver to take possession of the lands and rent them out or to collect and receive the rents therefor until the further order of the court, and an order restraining Bolton and Williams from paying money so decreed or the rents and profits of the lands to said Mary E. Branch or any one except the said Receiver *Transcript, page* 74), and on the 4th of December, 1871, the cause was further heard and a final decree rendered for the sale of the lands, or so much as should be sufficient to pay the sum of $3,666 66, and $3,483 32, being the interest from the 10th day of January, 1854, such sale to take place on the 16th day of January next thereafter, unless the said defendants, or some of them, should on or before that day pay the sum to said plaintiff, Bankhead. From this decree McNeill, Bolton and Williams appealed to this Court, and filing bond, obtained order of supersedeas, (*Transcript, pages* 84, 85).

We have thus attempted so to state the facts of this lengthy and confused record as to bring into one view all the points about which there can be any controversy, and to us it seems that such statement is all-sufficient to disprove any and all errors that can be assigned by the appellant.

The first and principal error assigned we understand to be:

That the subject matter here involved and that littigated and decreed in the Desha Circuit Court are the same, and it being matter over which the courts had concurrent jurisdiction, that decision is conclusive and binding, because that court first ac-

quired jurisdiction. That such prior jurisdiction was set up in the answers to Bankhead's amended and supplementary cross-bill, and this court erred in not dismissing the case.—*Smith vs. McIver*, 9 *Wh.*, 532; *Shelby vs. Bacon*, 10 *How.*, 56; *Taylor vs. Caryle*, 20 *How.*, 583.

We deny that any part of the proceedings in the Desha Court involved the same subject matter contained in this court until the filing of Mrs. Mary E. Branch's claim to the money, to be refunded to Branch, or his representatives, on rescinding the contract.

Bolton's suit in the State Court was for the recovery of the unpaid purchase money for which he had a lein upon the lands, equivalent to a mortgage.—*Smith vs. Robinson*, 13 *Ark.*, 534; *Harris vs. King*, 16 *Ark.*, 126; *Moore vs. Anders*, 14 *Ark.*, 633.

This vendor's lein was prior in date to McGregor, Alloway & Co.'s mortgage. The rights of the parties complainant in the two suits were therefor those of senior and junior mortgagees respectively, and McGregor, Alloway & Co.'s mortgage was upon the equity of redemption from the seinor mortgage. It is not contended that the prior exercise of jurisdiction by the State Court to enforce Bolton's rights was, under the rule referred to, inconsistent with the proceedings in this court below to enforce those of McGregor, Alloway & Co. The two subjects were different and might well be litigated cotemporaneously in the two courts, and the proceedings could never conflict so long as neither attempted to draw into its jurisdiction matters appertaining to the action pending in the other. If McGregor, Alloway & Co. were parties to that suit, they and the court in this case were undoubtedly barred by its proceedings, but only to the extent of the subject over which it had acquired a prior jurisdiction, viz: Bolton's cause of action. That ceased when Bolton's right were adjudicated and enforced. Had that court proceeded to foreclose Bolton's prior mortgage or to enforce a specific performance of the contract, which is the same thing it is plain that its jurisdiction would have ended when it had decreed the payment of the purchase money and sold the lands

and paid the decree with the proceeds and turned the balance, if any, over to Branch or his representatives. Such balance would have been held subject to the lien of McGregor, Alloway & Co.'s mortgage, unless there were other and prior claims upon it. But as to such lien or other claims they were in no manner connected with the prior proceedings, and that court would not, by virtue thereof, have had any priority of jurisdiction over them. The case is no ways different by the court's proceeding to rescind the contract instead of enforcing it. The cause and the court's prior jurisdiction ended with the rescision of the contract, and the repayment of the $3,666 66 and interest to Branch's administrator. Any further disposition of this money was a new and original proceeding, over which that court did not and could not have any priority of jurisdiction. That Mrs. Mary E. Branch's claim set up in that court to this fund without reference to Bankhead's rights and his suit pending in this court below was an original and independent suit is manifest from the fact that Bolton, the complainant, had no interest whatever in it. Her application as a part of the original proceedings in that case would have rendered the proceedings multifarious and should have been rejected on that ground; having no connection with the subject matter of the complainant it was not the subject of a cross-bill, for a cross-bill is a mode of defense and can only be maintained upon matters growing out of the original suit.—3 *Daniel's Ch. Pr.*, 1742, 3; *May vs. Armstrong*, 3 *J. J. Marsh*, 262; *Daniel vs. Morrison*, 6 *Dana*, 186; *Governeur vs Elmendorf*, 4 *John.'s Ch.*, 357.

If, therefore, this suit had not been pending at the time, still Mrs. Branch's claim was an original proceeding and the jurisdiction of that court over it only commenced from that time and to render such proceedings binding upon Bankhead he should have been made a party and have regularly been served with notice. That court could have no jurisdiction over him by virtue of his being a party to the prior proceedings: nor did McGregor & Alloway's failure to defend that suit alter the case. So far as Bolton's claim was concerned

they had no occasion to defend, for they could not deny it. They had no interest in opposition to it. Their interest was, by the force of the prior lien, confined to the balance of the lands or the proceeds after Bolton's claim had been satisfied. Bankhead (successor of McGregor, Alloway & Co.) was therefore in no manner bound by the decision of that court on Mrs. Mary E. Branch's claim, or pretended cross-bill, for there is no pretense that he was a party to her bill, or ever had any notice otherwise than as a party to the original proceeding. But moreover her bill did not set up or allude to Bankhead's lien upon that money, nor was it in any manner drawn into litigation or passed upon by the court in its decision. Had it been alleged or brought to the knowledge of the court it must be presumed the court would have dismissed her bill, or at least required her to make Bankhead a party with proper notice before he would have rendered any decree in the case.

The proceedings and decree upon her so-called cross-bill being therefore wholly exparte as to Bankhead, in no way affecting his lien or interest in the fund under his mortgage, there is no question of concurrent or priority of jurisdiction in the case, and it is needless to inquire whether the proceedings in this case were commenced prior to the filing of Mrs. Branch's cross-bill. But, again, Mrs. Branch's claim on that $3,666 66, if she had any by virtue of such marriage settlement, occupies the same attitude in regard to Bolton's suit in the State Court that Bankhead's does under the McGregor, Alloway & Co.'s mortgage. If the latter is a separate and independent subject of litigation, so is the former. If the prior exercise of jurisdiction in that case excluded the jurisdiction of this court below over her claim, it was equally exclusive of the proceedings in this case so far as Bankhead's mortgage is concerned. But we do not, as aforesaid, understand this to be contended for. If, however, it is, we insist that Branch himself first invoked the jurisdiction of this court in this case as the plaintiff in the original bill, wherein he admitted $8.000 to be due McGregor, Alloway & Co, and that the mortgage in question was a lien upon said lands for the security thereof, and those who claim

under him, either as heirs or by subsequent contract, are estopped from setting up the prior jurisdiction of that court.

We think it plain enough, therefore, that the court below did have jurisdiction to render its decree, notwithstanding the proceedings and decree of the State Court upon her claim, because those proceedings were wholly exparte, both as to Bankhead and the lien of his mortgage. But if he had been made a party, with due notice, and his rights had been passed upon, the case would have been the same; for the subject matter of her claim, while it constituted a separate and original proceeding in that court, was not a separate subject from the subject matter pending in this case in the Circuit Court for the foreclosure of Bankhead's mortgage. For whatever Court passed upon either her claim or Bankhead's, must necessarily determine to whom that fund belonged, and the jurisdiction over that subject had long before been appropriated by the Circuit Court below in this case. Not when Bankhead filed his amended and supplemental cross-bill, which was subsequent to the filing of her claim in the State Court, but when Branch himself, in his original bill, invoked that jurisdiction and tendered and assented to the action of the court in foreclosing the mortgage, or at least when Bankhead filed his original answer and cross-bill, submitting and agreeing to its foreclosure in that court. From that time the subject matter of her claim had been in this court for adjudication, and from and after the death of Branch she was a party to the proceedings As to the prior exercise of jurisdiction, therefore, over the subject of her rights, if she had any, it was in the Circuit Court below, and this every step in her remarkable proceedings in the State Court shows she very well knew. It is alleged, and not controverted, that both she and her husband's estate are insolvent, and if she should get the money into her possession through such exparte proceedings it could not be recovered back. Is it not too manifest that this was the key-note to all proceedings in that court upon her claim? If she could once get the money into her hands, while Bankhead's right to it was awaiting the

action of this court, it would be just as good to her as if Bankhead's mortgage was out of the way.

We presume it is not material that her claim under the marriage settlement was invalid and utterly worthless in any court, for if the State Court in passing upon it had had jurisdiction, this court would hardly disturb its proceedings on that ground. But is it not significant of the charge of a conspiracy to defraud Bankhead, alleged in the pleadings, that when brought into this court such marriage settlement was not set up or claimed to be of any validity as a defense to Bankhead's mortgage, and in fact that no defense to the merits whatever was interposed but only such as in effect asserted that their conspiracy had been fully consummated, and the fraud on the jurisdiction of the Circuit Court below had been made successful beyond the power of the court to help itself.

The next and only other error assigned or insisted upon is—that the court, upon the filing of Bankhead's amended and supplemental cross-bill, at first sustained defendant's exceptions to and struck the same from the files. That afterwards, and before the court had taken any further action, Seth W. Bolton and Williams, defendants, entered into a contract for the sale of one-half of the mortgage lands to Williams, in consideration for which Williams had already paid and secured to be paid to Mrs. Mary E. Branch, the whole of said sum of money in controversy, and that Williams and Bolton ought not to be made to pay the money twice.

As the striking of the supp'emental and amended bill was not a dismissal of the suit, a final decision of the case, nor in any manner a discharge of any of the defendants from the record, such a position we regard as too frivulous to require any argument from us, but on the contrary, in view of the hot haste of the parties, disclosed by this position to deprive this cours of its jurisdiction over the land, and place it beyond its power, we must call the attention of the court to its impudence and to its significance as evidence of the fraudulent motives and purposes which induced their proceedings in the State Court,

We are persuaded that if ever a case ought to be affirmed with damages, it is this.

Respectfully submitted,

CLARK & WILLIAMS.

# Supreme Court of the United States.

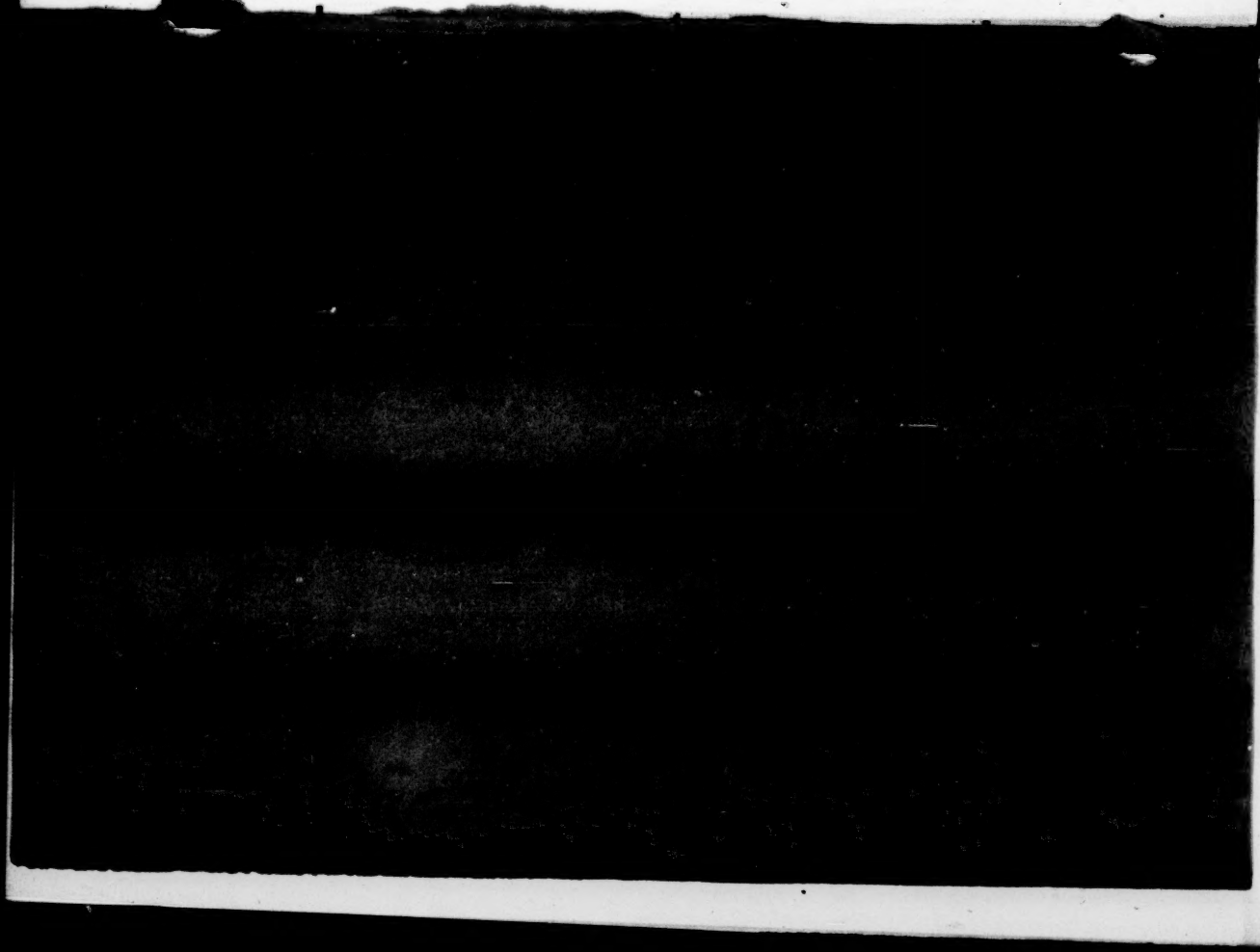
OCTOBER TERM, 1873.

DAVID A. WILLIAMS, ET AL., *Appellants*,
—*vs.*—
JAMES BANKHEAD, *Appellee*.
No. 232.

APPEAL FROM THE UNITED STATES CIRCUIT COURT FOR THE EASTERN DISTRICT OF ARKANSAS, IN EQUITY.

An additional
BRIEF FOR APPELLEE.

~~W. N. WEATHERFORD.~~
Clark & Williams



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## A BRIEF FOR APPELLEE.

McGregor, Alloway & Co. sued James H. Branch at law, in the Court below, who filed the original bill in this cause, praying an injunction, which was granted, restraining them from proceeding in that suit, admitting an indebtedness due them of $8,000.00, offered to confess judgment for that amount, exhibited a mortgage that he had executed some time before to secure them, prayed that an account be taken, offered that his indebtedness might be paid from proceeds of mortgaged property, and prayed that they "be compelled to litigate their claim *here* and *nowhere else*.". Printed Transcript, p. 7.

Bankhead, the appellee, answered as surviving partner, consented to litigate "here and nowhere else," exhibited evidence of the amount due as claimed, made his answer a cross bill, and prayed foreclosure of the mortgage and satisfaction of the claim and of its proceeds. Transcript, p. 23.

Branch died before final decree, and his administrator, McNeil,

was made a party (p. 4). Afterward Bankhead filed an amended and supplemental bill (p. 42), showing that the slaves mentioned in the mortgage had been emancipated, and that the land described was no longer Branch's, he having offered to cancel his contract of purchase, in a suit in the State Court, brought by Bolton, his vendor, for the purchase money, which cancelation was decreed, on final hearing (p. 69)—but that in the decree Bolton's representatives were required to repay the portion of purchase money, with interest, that Branch had formerly paid (p. 69)—and praying that McNeil, the administrator, be required, when he received it, to repay it to him (Bankhead), it being the only fund, that could be recovered, under the mortgage.

On McNeil's motion this amended bill was ordered stricken from the files, but was subsequently restored by order of Court, answered by McNeil, and considered by the Court, on final decree (p. 56), as part of the case. The process issued upon it to new parties was not served, and they did not answer, so the objection that new parties were made in a cross bill need not be considered.

McNeil's answer (p. 50) did not controvert the merits of Bankhead's case, but rested upon the allegation that he had, by the State Court, been decreed to pay this fund to Mrs. Branch, and that Bankhead was a party to that case.

The Court decreed the payment by McNeil of this fund, when received, to Bankhead, and authorized him to institute further proceedings against Bolton's representatives, or the occupants of the land, to get the benefit of the decree. Accordingly he filed a petition against Williams and Seth Bolton (p. 70), who answer jointly (p. 75), and defend, not because they are improperly made parties—they never raised that objection—but because, as they allege, the State Court had decreed the money to Mrs. Branch, and because "*they believed*" (p. 77) the action of the Court below, in ordering the amended bill of Bankhead stricken from the files, "finally disposed of the matter." So they claim to have bought her out, *pendente lite*; and also they reserve a demurrer, because *Mrs.* Branch is not made a party.

From the final decree in Bankhead's favor they all, Bolton, McNeil, and Williams, appeal.

The fund now remaining, being insufficient to pay the amount Branch conceded was due, appellee elected, after proving a larger indebtness, to take a decree for that sum, with interest, thus settling all question as to the merits of his case, by which appellants are driven to the defence in avoidance that a State Court has decreed the fund to Mrs. Branch, in a case in which appellee was a party, which being denied by him (Transcript p. 81), the *onus* of proof is upon them. We look in vain to the Transcript of that case, filed as an exhibit, for affirmative evidence of the fact that appellee was a party; nor can it be inferred from any decree, or recital, or from the published report (22 Ark., 435).

As a matter of fact it may be stated—but this is not proven—that in his original bill Bolton named McGregor, Alloway & Co. as defendants, and the usual order of publication was entered, in 1856, by the Clerk in vacation against them as non-residents of the State; but it does not appear that this publication was made, or that they were served with process, or appeared, or that any decree. *pro confesso* or final, was ever entered against them. Under the Arkansas law at the time (English's Digest, 148), the printer's affidavit of the publication was necessary *prima facia* proof.

In the ingenuous brief of their eminent counsel, Col. Garland, he says (p. 3), "And the record shows that Bankhead was there, as a prudent man, looking out for his interests," citing the printed transcript of this case (p. 57). Turning to it we find that the testimony of the records is contained in the *style* of the case, "*Isaac L. Bolton vs. James H. Branch, Joseph Branch, George McGregor, et als.*," as entered by the Clerk, no doubt, when the case was first docketed.

But "Bankhead was there, as a prudent man," etc. Certainly not as a prudent *woman*. The record shows, however, that at the Fall Term, '68, of that Court, *Mrs. M. E. Branch* filed her answer to Seth Bolton's bill of revivor, and prayed to have it made a cross bill, and that the administrator of said Branch be required to answer it. But it does not show that any process was issued against him, or that he answered, or entered his appearance, or took any notice of it. While under the State law (§34 p. 223 Gould's Digest) subpœna and service of process were necessary. Yet it seems that her appearance in this old and acrimoniously

litigated case was magical. Bolton was soothed; McNeil, Branch's representative, was hushed—the lion and the lamb had laid down together. Of the law-firm that represented Bolton (p. 63), Pindall & Randolph, the latter filed McNeil's answer to Bolton's bill (p. 66), but opened not his mouth to *Mrs. Branch*; while Pindall, for her (p. 67), gently led the honorable court beside the *still* waters into decreeing the entire fund to her (p. 69), "being entitled to it," says the decree, "by reason of the equities set up in her answer and cross bill."

These equities are evidenced by a trust deed, executed by Branch in August, 1864, to the property included in the Bankhead mortgage, which was then being litigated in this Court. (See McNeil's answer, p. 50.)

That this trust deed was void upon its face, because it allowed Branch (to. p. 45) to retain, use, and dispose of, at pleasure, the trust property. (See Perry on Trusts, § 590-1, and authorities cited.)

That it was void because it was not recorded in Arkansas. (See Gould's Digest, 799; Hannah *vs.* Carrington, 18 Ark., 85; Jacoway *vs.* Gantt, 20 Ark., 140.)

That it was void as to Bankhead, because made *pendente lite.* (Perry on Trusts, § 223.)

That the decree in her favor on cross bill was void as to Bankhead and McNeil because not made parties, by being served with process, or appearing or answering. (See the Act of the Arkansas Legislature of 1858, p. 172, declaring all such *void.*)

This act could not more appropriately apply than in this case. The Court would presume that McNeil knew it was void, and therefore failed to act rather than that he deliberately allowed the sacrifice of a fund due upon a prior claim to one junior in fact and void in law.

Bolton was the only defendant to her cross bill, but she neither prayed nor obtained a decree against him; hence it binds no one, and is void.

A decree which is a nullity will not be noticed in a collateral proceeding. (Evans *vs.* Purcival, 5 Ark., 429.)

One defendant *cannot* have a decree against a co-defendant without a cross bill and proper prayer, and process or answer, as in original suit. (Walker *vs.* Byers, 14 Ark, 262; 3 Daniel, ch. pr. 1743.)

A plea of a former decree should show that it was upon the same subject-matter and between substantially the same parties. (Story's Eq. Pl., 783 b. Redfield's ed.)

Instead, then, of their defence being conclusive, it seems not only that the decree was void but that it wanted the proper parties, and failed to pass upon the *interest* necessary to make it a valid defence.

Branch, by his representative, McNeil, shows to this Court (Tr. p. 51) that at the time he compelled Bankhead to litigate here, and tendered him satisfaction out of proceeds of the mortgaged property, a suit was pending in the State Court to enforce a vendor's lien—in Arkansas a first mortgage (Smith *vs.* Robinson, 13 Ark.) against the land—and that he had offered in that Court to cancel the contract of purchase and receive back the purchase money. Branch must be presumed, when demanding equity, to intend doing equity, which clearly was that in case his proposed cancellation of the contract was decreed. The fund decreed in lieu should be subjected, under the Bankhead decree, in lieu of the property.

If, as appellants insist, the State Court had prior jurisdiction of the *Bolton* contract, having first acquired it, which we don't deny, and might rescind it, as it did; this, an adjudication of that contract, being the object, was also the end of that case, proper. Branch, having in the meantime compelled this Court to take jurisdiction of the Bankhead mortgage, the purpose of which, after ascertaining and decreeing the amount due, was to cause sale of the property, and apply the *proceeds* to its payment, but from Branch's own offer and action in the State Court, prior to that time, the *fund realized—the proceeds*—under its decree was, of necessity, all that he offered and submitted to the jurisdiction of this Court, and is the identical subject-matter of which this Court at the time acquired jurisdiction, and is long prior to that of the State

Court; therefore no action in any Court by a new party, based upon a trust deed junior to that of Bankhead, could oust this Court of that jurisdiction, or reduce its decree to the grade of a *judicial duel*, as direfully apprehended by the learned counsel.

Nor could a *Rip-Van-Winkle sleep*, by all the parties herein, have changed the legal effects of this Court's decree, when rendered. Had Branch's representative appeared to the Mrs. Branch cross suit, thereby giving jurisdiction to that Court, which we have seen was not done, it would have been his duty, at his peril, to plead the pending of the same matter in this Court.

Objection is made that appellee's entire cross bill, both as to parties and subject-matter, is a *new departure*. On the contrary, it is *Bourbon*, after the strictest sect. The cross bill makes complainant in original bill the only defendant; and the debt and mortgage, introduced in original bill, constitute its entire subject-matter.

The supplemental cross bill follows the fund, of which we have seen this Court had prior jurisdiction, and which any party interested may, against a *pendente-lite* purchaser, which Williams and Bolton were. (Story Eq. Pl., § 342; Sedgwick *vs.* Cleveland, 7 page.)

It is no longer a question of the right to *acquire* jurisdiction, but of the Court's right, after jurisdiction of person and subject-matter are acquired, to afford proper relief.

A cross bill may be in the nature of an original bill, *seeking further aid* from the Court, *and then* the relief ought to be such as, in point of jurisdiction, it is competent *for the Court* to give. (Story Eq. Pl. § 398.)

It is true the *pendente-lite* purchasers were named as defendants, but they were not served with process, did not answer, and no decree was had against them—no one can complain; in fact they were not defendants.

There can be no question, according to their favorite, Story (Eq. Pl. 339), of the Court's right to allow a supplemental bill, or petition *in aid of a decree*. This the Court allowed, and was filed

(Tr. pp. 56 and 70. Bolton and Williams were brought before the Court, and answered without objection (p. 75). The right to object was personal (Story Eq. Pl. 237, 544); they chose to waive it at the time, it is now too late. McNeil cannot complain. The *sceptre* has departed from Judah, and all interest in this fund from the house of McNeil. At best he is only a *conduit pipe*, and in no event chargeable with it until he gets it (p. 69).

Nor is Mrs. Branch a necessary party. This Court would only refuse to proceed when it is evident that the subject-matter cannot be disposed of, and ample justice done (Payne *vs.* Hook, 7 Wallace, 431). Her interest is set out fully in the record, and being junior to that of appellee, as well as void, cannot be maintained here, unless this Court shall consider itself *absolutely concluded* by the State Court decree, in which event the relief prayed would be refused on that account, whether or not she was a party.

Clark & Williams

*of Counsel for Appellee.*